



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 14, 2017
Project Number: 254465184-001
File Number: SDAB-D-17-154

Notice of Decision

- [1] On August 30, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on August 3, 2017. The appeal concerned the decision of the Development Authority, issued on July 26, 2017, to refuse the following development:

To operate a Major Home Based Business (Administration office for janitorial services - Costless by Kostas Ltd.)

- [2] The subject property is on Plan 4942NY Blk 36 Lot 7, located at 6308 - 149 Avenue NW, within the RF1 Single Detached Residential Zone. The McLeod West Neighbourhood Area Structure Plan applies to the subject property.

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

- Copies of the refused permit, permit application, and business licence application; and
- Development Officer's written submissions dated August 23, 2017.

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

- Exhibit A – Appellant's photographs of subject Site.

Preliminary Matters

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

Summary of Hearing*i) Position of the Appellant, Costless By Kostas Ltd.*

- [8] The Appellant was represented by Mr. K. Karayiannis. He was accompanied by his son, Mr. Garcia.
- [9] Mr. Karayiannis recently moved to Edmonton and purchased the subject property in 2015 after searching for a home that could accommodate the storage of his work vehicles. He has met with neighbours on both sides and across the street. They have expressed no issues with the storage of his vehicles.
- [10] Two work-related vehicles are parked on-site, with a third family vehicle. One work vehicle is a Ford one-ton truck that is parked year-round on the Driveway. The second work vehicle is a smaller GMC Savanna, approximately $\frac{3}{4}$ tonne. This vehicle is parked on the Driveway in the summer months, but stored in the garage during the winter. In his opinion, the storage of these vehicles on-site does not cause a nuisance to his neighbours, and does not alter the character of the neighbourhood.
- [11] He submitted Exhibit "A", two photographs of the subject Site from two different angles along the street. Both photos were submitted to illustrate that the larger white work vehicle is barely visible from the street. The photos also showed the family minivan parked on the Driveway in tandem with the larger work vehicle.
- [12] Upon questioning by the Board, Mr. Karayiannis explained that the Ford vehicle is a custom build that accommodates his work equipment, including an air hose and other hoses for vaccuming, as well as miscellaneous tools. The gross weight of the vehicle including the work equipment is approximately 5400 kilograms.
- [13] He confirmed that he is the only employee of the business, and there are no other employees coming and going from the property. He typically leaves his home for work at 8:00 a.m. No vehicle maintenance is done on site.

ii) Position of the Development Authority

- [14] The Development Authority was represented by Mr. J. Angeles.
- [15] Mr. Angeles clarified that his main reason for refusing the development was the outdoor storage of the "one-ton" truck. It is the Development Authority's practice to refuse a Major Home Based Business development permit anytime there is outdoor storage of a commercial vehicle greater than 4,600 kilograms. Although he did not visit the site, he did review Google Maps images and the photographs submitted by the Appellant. The subject vehicle appears large to him and would change the residential character of the neighbourhood.

- [16] Upon review of Exhibit “A”, he acknowledged that the Ford truck parked on the Driveway does not appear to affect the character of the neighbourhood, as it has been parked further back on the Driveway toward the rear of the property. However, he noted that the photographs were taken at an angle, and questioned the visual impact if someone were to look directly at the home and the truck that is parked on the Driveway.
- [17] He confirmed that the vehicle weight is determined based on the manufacturer’s specifications, which contemplates the maximum weight of the vehicle when loaded to capacity. The Board presented him with several hypotheticals of comparable vehicles of varying weight, both greater and lesser than the subject truck which might otherwise be appropriate for this type of development. Mr. Angeles explained that ultimately, the Development Authority must consider impacts upon the neighbourhood. In this case, should the development be approved, he would advise that the commercial vehicle be enclosed and that no equipment from the vehicle be visible. Ultimately, there should be no visible outdoor activity.

iii) Rebuttal of the Appellant

- [18] Mr. Karayiannis confirmed that only bookkeeping, accounting and administrative work are done inside the principal dwelling. All equipment is enclosed within the work vehicle and will not be visible. He also confirmed that the vehicles are always parked in tandem as shown in Exhibit “A”.

Decision

- [19] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as applied to for to the Development Authority, subject to the following **CONDITION**:
- 1) Any vehicle exceeding 4,600 kilograms G.V.W.R. (Gross Vehicle Weight Rating) must be stored off-site or at a suitable location to comply with section 45(1)(a) of the *Edmonton Zoning Bylaw*.

Reasons for Decision

- [20] The proposed development is for a Major Home Based Business, which is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [21] Based on the submissions of both the Appellant and the Development Officer, the proposed use complies with most characteristics of a Major Home Based Business, namely that the principal Dwelling will be used mainly for administration and bookkeeping purposes. Business-related activities are not of a true commercial nature.

[22] However, the Appellant proposes the outdoor storage of an overweight truck which is not permitted under sections 45(1)(a) and 75(5) of the *Edmonton Zoning Bylaw*.

[23] Section 687(3)(d) of the *Municipal Government Act* provides as follows:

687(3) In determining an appeal, the subdivision and development appeal board

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood,
or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and [emphasis added]

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[24] The Board is bound by the recent Alberta Court of Appeal decision, *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140 [Grewal], wherein the Court held at paragraph 10 that “Outdoor business activity does not conform with the criteria of the Major Home Based Business use class.” In coming to this determination, the Court emphasized that although development regulations can be varied by the Board under its discretionary powers per section 687(3)(d)(i) of the *Municipal Government Act*, it can only do so where “the proposed development conforms with the use prescribed for that land or building in the land use bylaw per section 687(3)(d)(ii).”

[25] In other words, the use of the conjunction “and” under 687(3)(d) indicates that *both* criteria under s 687(3)(d)(i) *and* s 687(3)(d)(ii) must be met before a variance may be granted.

[26] In this case, the Board was presented with evidence that the outdoor storage of the Appellant’s work vehicle does not appear to unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board notes that there were no neighbours in opposition to the development, and accepts the submission of the Appellant that at least one of his neighbours supports the proposed development.

- [27] Notwithstanding that the proposed development meets the first arm of the test under s 687(3)(d)(i), it fails to meet the second arm under s 687(3)(d)(ii). As noted in the Court's decision in *Grewal*, above, outdoor business activity – which includes the storage of overweight work vehicles on a residential Driveway – is inconsistent with the criteria of the Major Home Based Business use class, namely that “The business Use... shall not change the residential character of the Dwelling” (section 7.3(7) of the *Edmonton Zoning Bylaw*).
- [28] Indeed, paragraphs 7 through 10 of *Grewal* concluded that 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. In paragraph 9, the Court held: “All elements of the Major Home Based Business definition refer to the use of the dwelling or accessory building, *making it clear that it is the building which must be used to conduct the business.*” [emphasis added] The Court specifically found that the outdoor storage or parking of trucks related to the business brought the nature of the activity outside the definition of a Major Home Based Business.
- [29] For the above reasons, the condition imposed by the Board prohibiting the storage of overweight work vehicles ensures compliance with this use class criteria. The condition will help to maintain the character of the proposed development as a Major Home Based Business.
- [30] Accordingly, the Board allows the appeal in part. The Major Home Based Business is granted subject to the proviso that there shall be no outdoor storage of any vehicle exceeding 4,600 kilograms G.V.W.R.



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

Board members in attendance: Mr. B. Gibson, Ms. G. Harris, Mr. A. Peterson, Ms. D. Kronewitt-Martin

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 14, 2017
Project Number: 243554395-001
File Number: SDAB-D-17-155

Notice of Decision

- [1] On August 30, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on August 8, 2017. The appeal concerned the decision of the Development Authority, issued on August 8, 2017, to refuse the following development:

To construct a Single Detached House with front attached Garage, veranda, balcony, rear uncovered deck with pergola (4.88 metres by 3.05 metres), fireplace, and Basement development (NOT to be used as an additional Dwelling)

- [2] The subject property is on Plan 1623429 Blk 17 Lot 33B, located at 7806 - 142 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the refused permit, permit application with attachments, and proposed plans;
 - Development Officer's written submissions dated August 22, 2017;
 - One online comment submitted in support of the development; and
 - Appellant's community consultation.

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. K. Godlewski

- [7] The subject property is located on a reverse pie shaped lot and is only 25 feet wide at the rear. The reverse pie shape lot dictated the development of a front attached garage and driveway. The rear lane is narrow and in very bad condition which would make access to a rear detached garage very difficult.
- [8] Seven of the 15 houses on this block have front access driveways. He acknowledged that the majority of those driveways provide access to garages that are setback to be flush with the house or at the rear of the lot. However, there is one existing front attached garage that protrudes in front of the principal dwelling.
- [9] Mr. Godlewski referenced photographs contained in his supporting materials to illustrate that front access driveways are characteristic of this neighbourhood despite the findings of the Development Officer. Photographs were also referenced to illustrate that the rear lane is narrow and in disrepair which would make access to a rear detached garage from the rear lane very difficult.
- [10] He questioned the finding of the Development Officer that the proposed garage is wider than other garages in the area. He physically measured some of the other garages and determined that they were approximately the same width as the proposed garage.
- [11] All of his neighbours and the President of the Community League have provided written support for the proposed development. Both of his immediate neighbours have front driveway access.
- [12] The subject property is located in an older neighbourhood with wide streets that can support the development of front attached garages and driveways.
- [13] Mr. Godlewski provided the following information in response to questions from the Board:
- a) There is no boulevard along this street and the curb is rolled which will make access to the proposed driveway easier.
 - b) One of his immediate neighbours has front access that leads to a carport, not a garage.
 - c) Most of the attached garages on the block can accommodate two vehicles.
 - d) There is only one attached garage on the block that protrudes past the front of the house but there are many other similar garages in the neighbourhood.
 - e) It was impossible to design the attached garage to be flush with the house because the lot is too narrow.
 - f) A rear attached garage could have been accommodated on the lot but it would reduce the rear yard amenity space.

- g) It was his opinion that a reverse pie shaped lot supports the development of a front attached garage and driveway.
- h) This lot had front access to a garage before it was subdivided as do most of the houses in this neighbourhood.

ii) *Position of the Development Authority*

[14] The Development Authority did not have a representative at the hearing, and the Board proceeded on the basis of the written submissions of the Development Officer, Mr. G. Robinson.

Decision

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

1. The development shall be constructed in accordance with the stamped and approved drawings;
2. Within 14 days of the written decision by the Subdivision and Development Appeal Board and prior to any demolition or construction activity, the Applicant must post on-site a development permit notification sign (Section 20.2);
3. Landscaping shall be installed and maintained in accordance with Section 55;
4. A Development Permit inspection shall be required in accordance with Section 26.

ADVISEMENTS:

1. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal, light standard and all other surface utilities.
2. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
3. Due to the roll face curb construction at this property, there are no requirements for a separate curb crossing permit under Section 1210 and 1212 of *Traffic Bylaw 5590*. Approval is given for the access under this Development Permit.
4. Unless otherwise stated, all above references to “section numbers” refer to the authority under *Edmonton Zoning Bylaw 12800*.
5. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.

6. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[16] In granting the development the following VARIANCES to the *Edmonton Zoning Bylaw* are allowed:

- 1) Section 814.3(10) is waived to permit the Driveway to be located off the front roadway rather than the rear lane.
- 2) Section 814.3(11) is waived to permit the Garage to protrude beyond the front wall of the principal building.

Reasons for Decision

[17] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.

[18] The proposed development is consistent with the principles outlined in the Municipal Development Plan, "The Way We Grow", for proposed infill development.

[19] Section 17(b) of the *Edmonton Zoning Bylaw* has been waived to allow front vehicle access for the following reasons:

- a) A hardship was created for the Appellant during the development of this lot because of the reverse pie shape. Development is therefore restricted to the size and dimensions of the lot and in this case, a front attached Garage is more suitable than a rear detached Garage because the lot is wider at the front than at the rear.
- b) Based on a review of the photographic evidence provided, front access driveways are characteristic of this neighbourhood.
- c) This lot had front access prior to being subdivided and both of the immediate neighbours have front access driveways.

[20] Section 18(a) of the *Edmonton Zoning Bylaw* has been waived to allow the proposed front attached garage to protrude beyond the front wall of the principal building for the following reasons:

- a) Based on a review of the photographic evidence provided, the proposed front attached garage is characteristic of the size of other existing garages in this neighbourhood.
- b) Although the Board notes that the proposed front attached garage will protrude farther in front of the front wall of the Principal Dwelling than the majority of other attached garages in the neighbourhood, the Board finds that it will not materially affect neighbouring property owners or negatively impact the neighbourhood.
- c) The Appellant undertook an extensive and thorough community consultation.

- d) The Board notes, based on a review of the submitted petition, that the proposed development has the overwhelming support of affected neighbours as well as the Community League.

[21] The Board notes that although the hearing of this appeal was held on August 30, 2017, the written and binding decision of this Board will be issued on September 14, 2017. During that interim period, Bylaw 18013 comes into effect on September 1, 2017. Bylaw 18013 amends portions of the Mature Neighbourhood Overlay under the *Edmonton Zoning Bylaw 12800*. Specifically, the amended sections 814.3(17)(a) and 814.3(18)(a) read as follows:

814.3(17) Vehicle Access shall be provided as follows:

- a. where a Site is Abutting a Treed Landscaped Boulevard, and an Abutting Lane is present, any existing vehicle access from the front or flanking roadway shall be discontinued and any new vehicle access shall be from the Lane;

814.3(18) Attached Garages shall be developed in accordance with the following:

- a. a Garage may protrude beyond the front or flanking wall of the principal building a distance that is characteristic of existing Garages on the blockface

[22] Given that the Bylaw that is applicable is the Bylaw that is in effect at the time that the Board's final written and binding decision is issued, the Board accordingly grants the required variances to the amended sections 814.3(17)(a) and 814.3(18)(a). The proposed vehicle access from the front roadway is permitted, and the front attached Garage is permitted to protrude beyond the front wall of the principal building.

[23] For the above stated reasons, the Board finds 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. The appeal is allowed.

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

Board members in attendance: Mr. B. Gibson, Ms. G. Harris, Ms. E. Solez, Ms. D. Kronewitt-Martin

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