



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 21, 2016
Project Number: 228926774-006
File Number: SDAB-D-16-321

Notice of Decision

- [1] On December 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on November 29, 2016. The appeal concerned the decision of the Development Authority, issued on November 24, 2016, to refuse the following development:

Allow for parking within the Front Yard (to keep the existing driveway and the crossing curb after the front attached Garage was converted into a living-room area)

- [2] The subject property is on Plan 5782NY Blk 37 Lot 45, located at 6124 - 152A 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:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submissions;
 - The Appellant's written submissions; and
 - Online responses.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs submitted by the Appellant
 - Exhibit B – Letter of support submitted by the Appellant
 - Exhibit C – City of Edmonton letter regarding the Real Property Report submitted by the Appellant

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*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Mr. B. Romanesky representing Permit Masters:

- [8] Mr. Romanesky used a Google aerial map to illustrate the context of the subject site and the surrounding neighbourhood, marked Exhibit A.
- [9] This property is located on the north side of an avenue with a rear lane. The blocks to the north and south of this site do not have rear lanes.
- [10] This Single Detached House was originally built with an approved single car front attached garage with a driveway. Later, a rear detached garage was constructed.
- [11] He submitted photographs, marked Exhibit A, to illustrate the subject site, the existing mature trees on both sides of the driveway, a view of 152A Avenue to the east and west as well as other properties with similar front driveways.
- [12] There are existing mature trees on either side of the existing driveway as well as the boulevard.
- [13] There are at least three other houses on this block with similar front driveways. He could not confirm whether all of the attached garages had been converted to living spaces.
- [14] Mr. Romanesky reviewed the copy of the Real Property Report that was submitted with the development permit application, which showed the existing 3.5 metres wide driveway, located 2.5 metres from the west property line. The driveway is 5.9 metres long.
- [15] A previous owner converted the single attached garage to a living space, and added a sunroom at the rear of the house. His client is trying to sell the property and applied for a Compliance Certificate which was not granted because of the renovations that occurred without permits and the existing front driveway.
- [16] Permit Masters applied for development and building permits for the conversion of the attached front garage and the addition of the sunroom at the rear of the house. Both

permits were issued last week. The development permit approval for converting the attached garage into a living space was not conditional on the removal of the front driveway.

- [17] Although a development permit application was made for the driveway, it was his opinion that it is a legal non-conforming development that does not require a development permit.
- [18] The driveway leads directly to the existing parking space that complies with the minimum required dimensions for a parking space, pursuant to Section 54.2.4.a.i of the *Edmonton Zoning Bylaw*.
- [19] It was his opinion that the Development Officer was selective in interpreting Section 54.2.2.e.i of the *Edmonton Zoning Bylaw*, which states “parking spaces shall not be located within a Front Yard, except Single Detached, Duplex and Semi-detached Housing”. The existing configuration was previously approved for the site and no amendments are proposed. The parking area does meet the minimum dimensions for a parking space and there have not been any concerns raised by adjacent property owners.
- [20] He commented that Section 55.2(g) of the *Edmonton Zoning Bylaw* applies only to new Single Detached Housing and not a house that was built over 35 years ago. The Front yard, except for the existing driveway, is sodded and there are large mature trees located on either side of the driveway.
- [21] Mr. Romanesky disagreed with three sections of the *Edmonton Zoning Bylaw* contained in the written submission of the Development Officer. It was his opinion that the driveway does fit the definition of a driveway pursuant to Section 6.1(26) of the Bylaw because it is a connection from the street to the subject site.
- [22] Section 44.6 of the Bylaw is not about parking it is about projections into a yard. In some situations a driveway is used to access a detached garage that is setback at the rear of a site but it does not prohibit the use of a front yard for a driveway especially for this legal non-conforming situation.
- [23] The neighbourhood was canvassed more than a week ago. He reviewed the notification map to illustrate the location of property owners who responded and indicated that they had no objection to the proposed development. Two property owners who reside immediately west of the subject site provided written support. One letter was sent in directly to the Board and the other letter was submitted and marked as Exhibit B. The immediately adjacent property owner to the east did not provide any feedback.

- [24] This is a legal non-conforming development and a development permit is not required. The driveway was originally constructed to provide access to an attached single garage. Even though the attached garage has been converted to living space, the driveway provides access to a parking space that complies with the minimum dimension requirements of the *Edmonton Zoning Bylaw*.
- [25] There are no safety issues arising from the use of the driveway and no objections from any of the neighbouring property owners.
- [26] When asked by the Board, Mr. Romanesky could not provide information regarding the year that the rear detached garage was built.
- [27] The front attached garage was converted to living space some time ago. Permit Masters applied for a development permit in August and it was issued last week. He reiterated that the approval was not conditional on the removal of the front driveway.
- [28] He assumed that the front driveway was built at the same time as the attached front garage in 1969 but no formal records could be found.
- [29] Upon review from the Board, it was determined that Mr. Romanesky referenced Section 54.2.2.e.i of the *Edmonton Zoning Bylaw* from the PDF version, which did not include the most recent amendment.
- [30] It was his opinion that this is a legal non-conforming development because presumably a development permit was issued when the attached garage was originally constructed although those records could not be found.
- [31] The existing concrete is the extent of the approved use because the originally approved attached garage no longer exists.
- [32] The driveway links the street to the subject site and the existing parking space which is the legal non-conforming use.
- [33] It was his opinion that the amendment to the *Edmonton Zoning Bylaw* made in September, 2011 supports the legal non-conformity of this development.

ii) *Position of the Development Officer, Ms. E. Lai:*

- [34] No record of the original approval for the Single Detached House could be found.
- [35] It was her opinion that this is not a legal non-conforming use because the original Use as an attached garage has been changed to living space.

- [36] She acknowledged that a development permit was approved last week for the garage conversion as an existing use without permits.
- [37] However, the development permit application for the driveway has to be considered separately from the conversion of the garage.
- [38] She confirmed that one of the recommended conditions proposed if the development is approved is that the parking pad can remain as long as it is not used as a parking space and that the curb crossing would have to be removed.
- [39] She acknowledged that the neighbours have not complained about the driveway but it was her opinion that because there is a rear lane, access should be provided from the rear.
- [40] The situation is totally different for properties located north and south of the subject site because there are no rear lanes and access from the rear is not possible.
- [41] She referenced an aerial photograph of the subject site to illustrate that the proposed development is not characteristic of this side of the block.

iii) Rebuttal of the Appellant

- [42] Mr. Romanesky referenced a letter received from the Development and Zoning Section, marked Exhibit C, which confirmed that the single detached house and attached garage complied with the requirements of the *Edmonton Zoning Bylaw*.
- [43] He was not supportive of the proposed conditions of the Development Officer because the property owner wants to park on the driveway.
- [44] The landscaping requirements have been met because of the existing mature trees located on the subject site.
- [45] He referenced a photograph of a similar house with attached garage on the block to reiterate that there are other similar front driveways existing on the north side of this block and therefore the proposed development is characteristic of this neighbourhood.

Decision

- [46] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

Reasons for Decision

- [47] The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [48] With regards to Section 54.1.5 of the *Edmonton Zoning Bylaw*, the Board finds based on the evidence submitted that the existing Single Detached House with attached Garage and Driveway was granted a Development Permit on March 13, 1969. Further, the Development Officer confirmed that a Development Permit for the conversion of the front attached Garage to living space has recently been issued in November 2016 and was not conditional on the removal of the existing driveway. Even though the attached Garage has been converted to living space, the Driveway continues to provide access to a parking space as it always had and complies with the minimum dimension requirements of the *Edmonton Zoning Bylaw*.
- [49] With regards to Section 54.2.2.e.i of the *Edmonton Zoning Bylaw*, the Board finds based on the evidence submitted that that Section did not apply to Single Detached Housing prior to an amendment in 2011. Pursuant to Section 616(a.1) and Section 643 of the *Municipal Government Act*, the parking space is a non-conforming development which may continue to be used if the parking space has not be enlarged, added to, rebuilt or structurally altered, which is the case here.
- [50] With regards to Section 55.2.g of the *Edmonton Zoning Bylaw*, the Board accepts the submission of the Appellant that this section primarily applies to “new Single Detached Housing” and is not applicable to the proposed development.
- [51] In the alternative, if the Board is incorrect in its previous findings, the Board would still allow the Appeal and grant the development with the required variances because it is of the view 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 for the following reasons:
- a) The driveway has existed for many years without any known complaint.
 - b) The Appellant undertook a community consultation and no objections were received from any of the property owners who reside within 60 metres of the subject site.
 - b) Four affected property owners who reside within 60 metres of the subject site indicated they did not object to the existing driveway. One provided a letter of support.

- c) Based on a review of the photographic evidence provided, there are two other houses on this block with similar front driveways that lead to attached front garages, one of which has been converted to living space.
- d) The existing parking pad complies with the minimum required dimensions for a parking space, pursuant to Section 54.2.4.a.i of the *Edmonton Zoning Bylaw*.
- e) The existing driveway is screened by two large mature trees on either side of the subject site, as well as mature vegetation on the boulevard which will mitigate the visual impact of the driveway from the front street. The remainder of the front yard is adequately landscaped.

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Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

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 5th 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 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 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.



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Date: December 21, 2016
Project Number: 235409651-001
File Number: SDAB-D-16-322

Notice of Decision

- [1] On December 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **November 25, 2016**. The appeal concerned the decision of the Development Authority, issued on November 25, 2016, to refuse the following development:

**Operate a Major Home Based Business (Massage Therapy - JASPER 124
MASSAGE THERAPY INC)**

- [2] The subject property is on Plan RN22 Blk 35 Lot 2, located at 12407 – Jasper Avenue NW, within the RF1 Single Detached Residential Zone (RF1 Zone), DC2.197 Site Specific Development Control Provision (DC2 Zone), and the Mature Neighbourhood Overlay.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments and the refused Development Permit;
 - The Development Officer's written submission; and
 - The Appellant's written submissions and a petition with signatures of support of the appeal.

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. D. Kremer*

- [7] The subject Site is unusual as the property is divided between a DC2 Zone on the west portion of the lot and an RF1 Zone on the east portion of the lot.
- [8] Ms. Kremer referenced her floor plans and indicated that the Development Officer misread the floor plans. She demonstrated that the primary dwelling is within the RF1 Zone and the business is within the DC2 Zone.
- [9] The bathroom and two bedrooms for the massage therapy aspect are located within the DC2 Zone and her bedroom, living room and kitchen are within the RF1 Zone.
- [10] The tenants in the commercial building across Jasper Avenue to the north have provided signatures of support for her business.
- [11] The letter of support for her business from the 124 Street Business Association outlines that the area is a mixed-use commercial and high density area. There are several shopping centres, hair salons, and several houses have been converted to businesses or restaurants.
- [12] She spoke to neighbours regarding the business, parking, and public transportation in the area. Residents have two parking permits for their property.
- [13] There is room to park two or three vehicles on the subject Site.
- [14] There will only be one non-resident employee.
- [15] There is a vacant lot west of the subject site and ten free angle parking spaces on the street, where clients can park if needed.
- [16] There are several major bus routes within the area that clients can access.
- [17] She does not want new clientele and will be providing service to her favorite clientele only. She does not want to increase her business as she already operates a clinic in St. Albert.
- [18] She is interested in purchasing the subject Site and would like to subsidize the cost of real estate with revenue from her proposed business.
- [19] The landlord previously rented out the property where a Major Home Based Business (Advertising Agency – THE AD GUYS INC.) operated for ten years. However, they are moving out of the location.

- [20] In response to questions by the Board, she confirmed that if the proposed development is approved she will move to the subject Site. She will live in the basement and the business will operate from the main floor. The kitchen and bathroom are on the main floor.
- [21] The entrance for the Major Home Based Business will be from the front of the House and through the hallway to the massage therapy rooms. The entrance and the hallway are within the DC2 Zone.
- [22] She stated that she is unsure if the proposed business was better defined as a Major Home Based Business or a Personal Service Shop but could fit into both Uses. Massage therapy can be located in both a House and a spa.

The Board Officer indicated that in the DC2.197 Zone, Homecraft is a listed Use. Under Section 3.4(3) of the *Edmonton Zoning Bylaw*, a Homecraft is deemed to be a Major Home Based Business.

- [23] She confirmed that she is applying for a Major Home Based Business.
- [24] She confirmed that she does not want more than five clients per day and the non-resident employee will have one or two clients per day. However, she is willing to limit the clientele to five per day between the two of them.
- [25] The non-resident employee will work in the afternoon and will set her own times.
- [26] She is not sure of the hours of operation but will be approximately 8:00 a.m. to 4:00 p.m. There will not be late evening appointments.
- [27] Clients will be able to wait in the living room if they come early.

ii) *Position of the Development Officer, Mr. Vasquez*

- [28] With regard to zoning, he stated that he researched the two different zones prior to making his decision. He referenced the City Council Land Use Bylaw Amendment (LUB/89-44). The Bylaw redistricts 0.381 hectares of Lot 2 of the subject Site to a DC5, which is considered a DC2 in the *Edmonton Zoning Bylaw*. Based on a Real Property Report, the survey plan separates the Lot 2 portion that is within the DC2 Zone and the Lot 2 portion of the House. In his view, the entire House is within the RF1 Zone.

- [29] He referenced the June 12, 2013 survey drawing provided in his submission. He indicated that the northwest corner of the subject Site, which is part of Lot 2, is 4.33 metres Easterly on the northeast corner of Lot 1. In his view, the west property line of the subject Site is the boundary between the RF1 Zone and the DC2 Zone.
- [30] With regard to whether the proposed development is a Personal Service Shop or a Major Home Based Business, based on 10 client visits per day, the proposed business would be classified as a Personal Service Shop. He indicated that 5 clients per day is the threshold between a Major Home Based Business and a Commercial Use. He opined that once a business is producing more than 5 client visits per day, the business use of the building is no longer secondary to the residential use, as required by section 7.3(7) of the *Edmonton Zoning Bylaw*.
- [31] Having up to ten clients per day (70 clients per week), the proposed development is in excess of what is typically allowed for a Major Home Based Business.
- [32] If the proposed development is deemed a Major Home Based Business three on-site parking spaces are required, two parking spaces for the dwelling and one parking space for the business.
- [33] He was aware of the previous Major Home Based Business that was approved for ten years. He confirmed that the Major Home Based Business was approved in 2010 as a Major Home Based Business. The approved business was for a Graphic Design company that had two employees and two customer visits per day.
- [34] He is agreeable to a condition that the Appellant can only have five customer visits per day between her and the non-resident employee. He has no condition to the hours of operation.
- [35] He is agreeable to a five year time limit with the opportunity for the Appellant to re-apply for another Development Permit after this time.
- [36] He recognizes that the site is in close proximity to 124 Street and Jasper Avenue between residential and commercial properties.

iii) Rebuttal of the Appellant, Ms. D. Kremer

- [37] She does not intend to have more than five client visits per day and possibly only two to three clients per week.
- [38] She does not usually operate on Saturdays or Sundays.

[39] She is agreeable to a condition to have no more than five client visits per day.

Decision

[40] 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. This approval is for a five year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on December 22, 2021.
2. There shall be no more than five client visits per day.
3. The number of non-resident employees or business partners working on-site shall not exceed one at any one time (Section 75(4)).
4. The Major Home Based Business shall be operated by a resident of the Dwelling on the property and must be secondary to the residential use of the Building (Section 7.3(7)).
5. 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 (section 75(1)).
6. 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 (section 75(2)).
7. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (section 75(3)).
8. 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 (Section 75(5)).
9. The Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings (Section 75(6)).

10. 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 (Section 75(10)).
 11. This Development Permit may be revoked or invalidated, at any time, if the Major Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes.
- [41] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required off-street parking spaces of 3 per section 54, schedule 1(A)(3) and (8) is varied to permit a deficiency of 1 off-street parking space, thereby decreasing the minimum required off-street parking spaces to 2.

Reasons for Decision

- [42] The proposed development, a Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [43] Although the current Zoning map shows that a portion of the subject House is located in the DC2.197 Site Specific Development Control Provision (DC2 Zone), the Board accepts that the written description of the LUB/89-44 excludes the House from the DC2 Zone and finds that the House is within the RF1 Zone.
- [44] If the Board erred on determining the correct Zone and the proposed development is within the DC2 Zone, the Board finds that a Major Home Based Business is a listed Use in the DC2 Zone per section 3.4(3) of the *Edmonton Zoning Bylaw*.
- [45] The Appellant completed a community consultation and has overwhelming support from neighbouring property owners and no one is opposed to the proposed development.
- [46] The 124 Street Business Association submitted a letter in support of the proposed development.
- [47] The Board notes that three vehicles can park in Tandem on the existing Driveway and notes that there is public angle parking one lot to the west.
- [48] The Board notes that the condition of 5 client visits per day will alleviate any potential concerns that the proposed development becomes a development more suitable for a Commercial Zone.

[49] 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.

A handwritten signature in blue ink, appearing to read 'B. Gibson', with a long horizontal flourish extending to the right.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

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