

Edmonton Subdivision and Development Appeal Board

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Date: March 3, 2016
Project Number: 180054490-006
File Number: SDAB-D-16-052

Notice of Decision

[1] On February 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 26, 2016**. The appeal concerned the decision of the Development Authority, issued on January 14, 2016, to refuse the following development:

construct exterior alterations (Driveway extension, 5.79m x 3.05m) to a Single Detached House, existing without permits

[2] The subject property is on Plan 4649HW Blk 57 Lot 14, located at 10129 - 84 STREET NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Appellant's photographs of the site;
- A Canada Post Confirmation;
- The Residential Development and Building Application;
- Photos of the Parking Pad submitted by the Development Officer;
- A response from Transportation Services;
- The Development Officer's written submissions;
- The refused Development Permit; and
- An online response in support of the appeal.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

i) Position of the Appellant, Mr. J. Letwin

[6] The Appellant, Mr. J. Letwin, appeared at the hearing and reiterated the arguments made in the Grounds for Appeal that were filed with the Notice of Appeal.

[7] First, the Appellant asserted that he extended the driveway for safety purposes. He uses the extension to back his vehicles onto so he can enter 84th Street going forwards. He stated that 84th street is a busy access point to the downtown area. The street narrows near his driveway. He referred to photos to show that visibility can be poor because of the curve of the street and the trees on the boulevard. Visibility problems are exacerbated when vehicles are parked on the side of the road. When exiting the driveway in reverse, three quarters of his vehicle are exposed before he is able to see any traffic. The extension allows him to turn his vehicle around and exit the driveway facing traffic.

[8] He spoke to all of his neighbours. None of them object to the extension and one expressed the wish that he could have a similar extension.

[9] He will be completing the landscaping in the front yard, which will improve the appearance of the extension.

[10] The Appellant then referred to pictures of other properties in the neighbourhood with driveway extensions. Because of these existing oversized concrete driveways, it did not occur to him that his own extension might not be allowed.

[11] The driveway extension is occasionally used for parking by visitors, but he parks his own vehicle at the back of the property.

[12] He cannot move the extension closer to his house and off the road right-of-way because to turn out the garage would be too tight.

[13] Building the driveway extension did not result in any changes to the existing curb crossing.

ii) Position of the Development Officer, Ms. F. Hetherington

[14] Ms. F. Hetherington appeared at the hearing on behalf of the Development Authority to field questions from the Board.

[15] In response to the pictures provided by the Appellant showing driveways in the neighbourhood that extended beyond the width of their respective garages, she stated that the Development Authority does not approve any driveway that extends beyond the width of the garage. She stated that, if it extends beyond the width of the garage, the Development Authority may allow it to exist as a sidewalk but not for the purpose of parking vehicles.

[16] The Development Officer also stated that the Development Authority would like to discourage similar developments in the neighbourhood. She advised the Board that approximately 50 percent of the properties on the block on which the subject property is located have front attached garages, and the City will not approve similar driveway extensions for those properties.

[17] With respect to parking, she stated that because there is a rear lane behind the property, there is no unnecessary hardship that would justify a variance from the Development Authority to allow parking on the driveway extension.

[18] Finally, when questioned about the Mature Neighbourhood Overlay, the Development officer stated that, although the driveway extension did not violate any specific regulation in the Overlay, it was not compatible with the traditional character of the neighbourhood.

iii) Position of Transportation Services

[19] A representative of Transportation Services appeared at the hearing.

[20] She stated that Transportation Services had reviewed the site and determined that, although the road has channelization just south of the subject property by a centre median, the road expands to two full lanes as it proceeds north and is wide enough to accommodate the flow of traffic in front of the Appellant's property.

[21] She also addressed the pictures referred to by the Appellant and stated that the extensions in these pictures were likely sidewalks as opposed to driveway extensions. Also, those extensions are not located on main roads like 84th street.

[22] In responding to questions regarding Transportation Services' concern for the safety of pedestrians in the neighbourhood, she informed the Board that, while Transportation Services had not received any complaints from pedestrians, they are concerned about pedestrian safety because the driveway extension is adjacent to the sidewalk and pedestrians do not expect a vehicle to back out into that area. Also, they are concerned that a door of a car parked on the extension could be opened and hit a pedestrian on the sidewalk.

[23] Finally, she stated that 1.5 metres of the Appellant's driveway extension had been built on the road right-of-way. This area may be required for utilities in the future. Also, the Appellant would have to obtain a Licence of Occupation from the City to use the right-of-way. She then explained that, even if the Appellant's appeal were allowed, it is possible that the City would refuse to issue a Licence of Occupation.

vi) Rebuttal of the Appellant

[12] The intended use for the extension was for the Appellant to have space to turn his vehicle around before entering the roadway, not for parking.

[13] With respect to the Development Officer's concern that neighbouring property owners would construct similar driveway extensions, that only 50 percent of the homes in the neighbourhood have front access to the street and, among those properties, the majority of them face a wider portion of the street and do not have the same problems that he has in exiting his driveway.

[14] With respect to concerns about safety, he always watches for pedestrians when backing onto the extension and when opening his car door.

Decision

[13] The appeal is DENIED, and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

[14] The Board notes that approximately 50 Percent of the properties in the neighbourhood have front access driveways. However, the evidence indicates that no other home in the neighbourhood has a driveway extension like the one proposed by the Appellant. Accordingly, the Board finds that the proposed development is not characteristic of the neighbourhood.

[15] The Board further notes that, although the Appellant indicated that the driveway extension is used primarily to allow him to turn around in order to exit the driveway facing forwards, the driveway extension is occasionally used for parking. Section 54.2(2)(e)(i) of the *Edmonton Zoning Bylaw* prohibits parking within a front yard. The Board is of the view that parking in the front yard at this location negatively impacts the streetscape.

[16] Section 55.4(1) states "All open space including Front Yards...shall be landscaped with trees, shrubs, flower beds, grass, ground cover or suitable decorative hardsurfacing..." This driveway extension is monolithic concrete, which is not considered landscaping material. Accordingly, the extension is a violation of this section. The driveway extension reduces the amount of landscaping that can be accommodated in the Front Yard and therefore negatively impacts the streetscape.

[17] Finally, the Board notes that approximately half of the driveway extension is located on the City's right-of-way.

[18] For the above reasons, the Board is of the opinion that this driveway extension will unduly interfere with the amenities of the neighbourhood and therefore should not be allowed.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC:

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*, R.S.A. 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.

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: March 3, 2016
Project Number: 177734464-001
File Number: SDAB-D-16-053

Notice of Decision

[1] On February 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 26, 2016**. The appeal concerned the decision of the Development Authority, issued on January 12, 2016, to approve the following development:

construct a 2 Storey Accessory Building (Garage Suite on 2nd Floor, Garage on the main floor, 8.99m x 7.92m) and to demolish the existing rear detached Garage

[2] The subject property is on Plan 4014HW Blk 3 Lot 36, located at 8643 - 81 STREET NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Appellant's written submissions with photographs attached;
- Additional notes submitted by the Appellant;
- The Garage Suite Application;
- The Site Plans;
- The Approved Development Permit;
- The Respondent's written submissions; and
- On-line responses from the public.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

i) Position of the Appellant, Mr. K Yeung

- [6] The Appellant reiterated the arguments made in the Grounds for Appeal listed in the Notice to Appeal.
- [7] First, he gave evidence with respect to the high number of vehicles parked in the vicinity of the subject property. He stated that the Respondent's tenants' home-based business was the source of the traffic, which was affecting the use, enjoyment and future value of his property.
- [8] In the past, the Development Authority would only allow the development of a Garage Suite if it fit into one of six situational categories. The Respondent's development fit into no such category.
- [9] He expressed concern with respect to his privacy. He stated that the Garage Suite, once developed, will look directly into his master bedroom.
- [10] Regarding the Site Coverage variance granted by the Development Officer, the Appellant stated that he opposed any such variance and that the regulation limiting Site Coverage should be upheld.
- [11] Finally, for all of the above reasons, the Appellant argued that, should the development be allowed, it would set a bad precedent for a neighbourhood containing a lot of houses backing into open yards.

ii) Position of Affected Property Owners in Support of the Appellant

- [12] Mr. A. Yeung appeared in support of the Appellant. Mr. Yeung is the owner of the property municipally described as 8815-81 Street NW.
- [13] Mr. Yeung stated that he was opposed to the development because, like the Appellant, he was concerned that it would bring parking problems in the neighbourhood. He suspected that, given the amount of vehicles on and around the subject property, the Minor Home Based Business associated with the property was as actually operating more as a Major Home Based Business. As a result, allowing the development of the Garage Suite would prevent the neighbourhood from retaining its current character.
- [14] Mr. Yeung also advised the Board that the City approved the Garage Suite with the understanding that there was no existing Secondary Suite on the property. Mr. Yeung expressed his concern that, the Secondary Suite may not have been decommissioned, because there were several people living in the home.

iii) Position of the Development Officer, Ms. F. Hamilton

[15] Ms. F. Hamilton appeared at the hearing to answer questions.

[16] She confirmed that the business associated with the property is a Minor Home Based business, which, as opposed to a Major Home Based Business, allows for the development of a Garage Suite on the property. She also confirmed that the development permit for the Garage Suite was granted subsequent to the decommissioning of the Secondary Suite that had previously been on the property. The decommissioning was confirmed by an inspection by the City.

[17] In response to the Appellant's assertion that the subject property did not meet the locational requirements for Garage Suites, Ms. Hamilton stated that the City's regulations were changed last year and that those locational criteria have since been removed.

[18] She then addressed concerns with respect to the number of people residing on the property. She stated that, as long as the number of unrelated people living in the house is less than three, it is possible that the other individuals in the home could be renting legally even without a Secondary Suite.

[19] Ms. Hamilton confirmed that the only variance granted for the development pertained to Site Coverage. The Garage Suite covers 13% of the Site. Section 110.4(7)(a) allows only 12% Site Coverage for Accessory buildings. However, Total Site Coverage can be up to 40%. In this case, the Total Site Coverage with the proposed Garage Suite would be only 31%. Accordingly, she was of the view that the small variance with respect to the Garage Suite would not unduly interfere with the neighbourhood.

[20] In response to questions regarding the Appellant's privacy, Ms. Hamilton advised the Board that a change in design to the proposed Garage Suite addresses privacy issues. She explained that the Suite was reoriented to have the large living room windows and the balcony face the rear lane rather than the back yard and the Appellant's house. Now only smaller bedroom and den windows face the back yard. Also, the location of the Garage is now set eight metres away from the Appellant's house, a large enough distance that it should not interfere with the Appellant's privacy.

[21] There are no records of complaints with respect to the Home Based Business on the property or parking problems in the area.

[22] The proposed development meets the parking requirements in the *Zoning Bylaw*.

iv) Position of the Respondent, Mr. A. Wong

[23] The tenants living with him in his home, a family of four, are friends of his. He advised the Board that he is not aware of what his tenants do with their business. He only knows that they have a licence for a wholesale car business.

[24] With respect to the number of vehicles on the property, the Respondent stated that he owns three cars and his tenants own two. He further stated that, if he does rent out the Garage Suite in the future, there is public transit nearby that could alleviate the congestion of vehicles on the property.

[25] In his submissions to the Board, he included a list of seven neighbours in the area that he said supported his development. None of these neighbours had expressed any concerns to him regarding potential impacts on their privacy, including the next door neighbour.

[26] Finally, he stated that his development would ultimately further the City's goal of creating affordable, sustainable housing as outlined in the City's Infill Road Map.

vi) Rebuttal of the Appellant

[24] In rebuttal, the Appellant reiterated his concerns with respect to parking in the neighbourhood and the location of the proposed Garage Suite.

Decision

[19] The appeal is DENIED, and the Development Authority's decision is CONFIRMED. The Development is GRANTED as approved by the Development Authority.

Reasons for Decision

[20] A Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone.

[21] The Appellant and one neighbour raised several concerns about the proposed development, most of which related to the behaviour of people on the Site, specifically the operation of the Minor Home Based Business. That business is an administrative office for a car auctioning business. Those concerns related to the excessive number of vehicles on or near the Site and multiple client visits in the course of the day. The Board is of the view that those concerns are enforcement issues and should not have a bearing on this appeal. Should enforcement officers determine that the business is being operated improperly, the City has the means to enforce compliance.

- [22] The Board is satisfied that no Secondary Suite exists in the home. While there is a family of tenants living in the home, there is nothing prohibiting them from doing so.
- [23] The only variance required for the proposed development is a one percent Site Coverage variance with respect to the Garage Suite. The Garage Suite covers 13 percent of the Site instead of 12 percent. However, the Total Site Coverage with the proposed Garage Suite is only 31 percent, whereas up to 40 percent Total Site Coverage is allowed. The Board is of the view that this minor variance will have no negative impact whatsoever.
- [24] The Appellants also raised issues about privacy because some of the windows in the proposed Garage Suite will face towards their house. However, the Board notes that there are only two smaller bedroom and den windows facing the rear yard. The larger living room windows and the deck face the back lane. Also, the Garage Suite will be located a significant distance from the property line.
- [25] The Board is also of the view that the proposed Garage Suite is in a good location as it is situated between existing garages on adjacent lots.
- [26] In the neighbourhood, there were three residents that voiced opposition to the proposed development, but there are seven residents that the Respondent indicated supported the development.
- [27] The Board also notes that allowing Garage Suites is in line with the City's objective to increase densification where appropriate.
- [28] All things considered, it is the Board's opinion that this development should be allowed.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC:

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*, R.S.A. 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.
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Date: March 3, 2016
Project Number: 180065913-001
File Number: SDAB-D-16-054

Notice of Decision

[1] On February 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 20, 2016**. The appeal concerned the decision of the Development Authority, issued on December 23, 2015, to refuse the following development:

**operate a Major Home Based Business (Home office for Welding business -
ARC ENVY WELDING)**

[2] The subject property is on Plan 8220615 Blk 72 Lot 9, located at 8522 - 188 STREET NW, within the RF1 Single Detached Residential Zone. The Aldergrove Neighbourhood Structure Plan and West Jasper Place North Area Structure Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Canada Post Confirmation of delivery;
- An e-mail from the Development Officer;
- The Home Based Business Application form;
- Photographs of the Site from the Development Officer;
- The refused development permit;
- The Development Officer's written submissions;
- Online responses from the public;
- Two e-mails in opposition to the development; and
- A letter in opposition to the development.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

i) Position of the Appellant, Rhys Dauenhauer

[6] First, the Appellant referred to his application for a Minor Home Based Business development permit that he submitted to the Sustainable Development Department. He stated that the City erred in changing the classification of his business to a Major Home Based Business because he does not do any work on the property and his home is not set up to support a welding business. He indicated that he does work at various sites around Edmonton and he uses his truck to do this work. He merely parks his truck at home when he is not working.

[7] The only reason he applied for a Minor Home Business development permit was because he was told he needed this permit before he could get a business licence.

[8] The Appellant further advised the Board that the property has no room for storage of any equipment and the only business-related item on the property is his truck, which he parks in the driveway and is too large to be parked in the garage. He acknowledged that it has a business logo on it, and there was visible welding equipment loaded onto the rear of his truck.

[9] His truck was currently the only vehicle on the property that stored any equipment or displayed a logo promoting any company. He referred to a photo showing that the truck belonging to his brother, the owner of F1 Welding & Fabrication Ltd., displayed no logo and carried no equipment.

[10] With respect to the weight of his truck, he stated that, according to his calculations, his truck weighed approximately 3 900 kg, including equipment. He explained that this was well under 4 600 kg, what he perceived to be the maximum allowable weight under the *Edmonton Zoning Bylaw*.

ii) Position of Affected Property Owners in Support of the Appellant

[11] Mr. K. Pratley, a resident of 8524 188 Street NW, appeared at the hearing in support of the Appellant.

[12] He confirmed that there was no work activity taking place on the property and that the trucks belonging to the Appellant and his brother were not causing any parking issues in the neighbourhood. He further stated that the property was kept clean and that there were no problems with respect to the appearance of the property.

iii) Position of the Development Officer, Mr. J. Xie

[13] The Development Officer appeared at the hearing to respond to questions from the Board.

[14] In response to questions regarding the weight of the Appellant's truck, he stated that it was his determination that the truck was a commercial vehicle and, as such, the unit of measurement applicable was the Gross Vehicle Weight Rating (GVWR). He explained that this unit of measurement indicates how much the vehicle would weigh if it were loaded to its maximum weight capacity and that Section 45(1)(a) of the *Edmonton Zoning Bylaw* limits the GVWR of commercial vehicles to 4 600 kg in residential zones. He stated that, according to his research, a truck such as the Appellant's could not have a GVWR less than 4 762 kg, which would exceed the 4 600 kg maximum prescribed by the *EZB*. He stated that, even if stored out of sight, the truck would still be overweight and incompatible with the *Bylaw*.

[15] He was then questioned regarding his determination that the proposed business would change the principal character of the Dwelling. In response, he stated that he interpreted the meaning of "personal character" to encompass more than the building located on the Site. He stated that the Dwelling should appear purely residential as opposed to having commercial vehicles on Site.

vii) Rebuttal of the Appellant

[16] The Appellant asserted that any one-tonne pickup truck in existence would exceed the maximum GVWR prescribed by Section 45(1)(a) of the *Edmonton Zoning Bylaw*. He reiterated that the actual weight of his vehicle was much lower than that.

Decision

[29] The appeal is ALLOWED, and the Decision of the Development Authority is REVOLKED. The development is GRANTED as a Minor Home Based Business (Home office for Welding business – ARC ENVY WELDING) subject to the following CONDITIONS:

- i)* No Commercial Vehicles shall be parked on the Site. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site.
- ii)* The operator of the business must be a resident of the Dwelling. There shall be no more than one business associated visit per day at the Dwelling (Section 7.3(8)).
- iii)* There shall be no exterior signage, display or advertisement other than a business identification plaque or Sign 10.0 cm x 30.5 cm in size located on the Dwelling (Section 74(1));
- iv)* 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 74(2));

- v) The Minor Home Based Business shall not employ any person on-site other than a resident of the Dwelling (Section 74(3));
- vi) There shall be no outdoor business activity, or outdoor storage of materials or equipment associated with the business allowed on the Site. In particular, no vehicles with logos or visible equipment used for the business shall be allowed on the Site. Indoor storage shall only be allowed inside the Dwelling (Section 74(4));
- vii) The Minor Home Based Business shall not change the principal character or external appearance of the Dwelling involved (Section 74(5));
- viii) No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced;
- ix) The business Use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood;
- x) All parking for the Dwelling and Home Based Business must be accommodated on Site;
- xi) The Site shall not be used as a daily rendezvous for employees or business partners;
- xii) This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2);
- xiii) 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 March 3, 2021.

Reasons for Decision

[30] The Appellant acknowledged that his vehicle has a logo on it and welding equipment visible in its rear bed. He also acknowledged that he uses this vehicle in conducting his welding business. The Board is satisfied that the vehicle is a Commercial Vehicle within the meaning of Section 45(2)(b) in that it is used for commercial purposes. The Board also accepts the evidence of the Development Officer that this vehicle has a GVWR that exceeds 4 600 kg. Section 45(1)(a) provides that no person shall keep a vehicle of this nature on a Site in any Residential Zone.

[31] The Board is of the view that this kind of Commercial Vehicle is inappropriate in a residential area such as the Appellant's neighbourhood. Also, the Board notes that the vehicle is so large that it will not fit inside the front-access garage, making it visible from the street whenever it is parked on the driveway. The Board is of the view that this will unduly interfere with the amenities of the neighbourhood.

[32] The Appellant applied for a Minor Home Based Business development permit so he could get a business licence for his welding business. The Development Officer changed this to a Major Home Based Business application because the Appellant's truck would be stored on the property, which is not allowed for a Minor Home Based Business. However, if the truck is not kept on the property, there will not be any business-related storage outside of the Dwelling. Accordingly, the Board feels it is appropriate to grant a Minor Home Based Business development permit so long as the truck is not parked on the property. This will allow the Appellant to apply for a business licence.

[33] The three neighbours who voiced opposition to the development permit were primarily concerned about Commercial Vehicles on the property. By stipulating that Commercial Vehicles are not allowed on the property, the Board has addressed those concerns.

[34] The Board is of the view that allowing the development permit for a Minor Home Based Business (Home office for Welding business – ARC ENVY WELDING) will not materially interfere with the amenities of the neighbourhood or unduly affect the use, enjoyment or value of the neighbouring parcels.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC:

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 - 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.
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Date: March 3, 2016
Project Number: 179935126-001
File Number: SDAB-D-16-055

Notice of Decision

[1] On February 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 20, 2016**. The appeal concerned the decision of the Development Authority, issued on December 23, 2015, to refuse the following development:

operate a Major Home Based Business (Administration office for mobile welding business - F-1 WELDING AND FABRICATION)

[2] The subject property is on Plan 8220615 Blk 72 Lot 9, located at 8522 - 188 STREET NW, within the RF1 Single Detached Residential Zone. The Aldergrove Neighbourhood Structure Plan and West Jasper Place North Area Structure Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Certificate & Articles of Incorporation;
- An e-mail from the Development Officer;
- The Home Based Business Application form;
- Photographs of the Site from the Development Officer;
- The refused development permit;
- The Development Officer's written Submissions;
- Online responses from the public;
- The Aldergrove Neighbourhood Structure Plan; and
- The West Jasper Place North Structure Plan.

Preliminary Matter

[4] As the Board had not received Canada Post confirmation of delivery of notification with respect to this appeal, it raised the issue of late filing prior to the hearing.

[5] Katherine Jahnig, attending the hearing in support of the Appellant, gave evidence that she signed for notification of the Development Authority's decision on January 6, 2016. As the appeal was filed on January 20, 2016, the Board determined that the appeal was filed within the 14-day limitation period and assumed jurisdiction on that basis.

Summary of Hearing

[6] 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.

[7] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

i) Position of the Appellant, Evan Dauenhauer

[8] At the hearing, the Appellant explained that he submitted an application for a Minor Home Based Business permit. He did not understand why his application was categorized as a Major Home Based Business permit application as he does not store any equipment on the property or in his truck. He proceeded to show the Board a picture of his truck displaying no logo and carrying no equipment. He uses the truck as personal transportation only.

[9] He further indicated to the Board that his business has not made any money, and he has not done any work for the business. He stated that he only incorporated his business to secure its name and that he only applied for a development permit because he got fined by Bylaw enforcement. He advised the Board that investigators came across a Facebook page his father made for him displaying the address of the subject property, and they interpreted the page to be advertising. He stated that he has since altered the page to confirm that his business is not currently in operation.

[10] Finally, he stated that he does not need the permit so long as he Bylaw enforcement will not bother him about not having one.

ii) Position of Affected Property Owners in Support of the Appellant

[11] Mr. K. Pratley, a resident of 8524 188 Street NW, appeared at the hearing in support of the Appellant.

[12] He confirmed that there was no work activity taking place on the property and that the trucks belonging to the Appellant and his brother were not causing any parking issues in the neighbourhood. He further stated that the property was kept clean and that there were no problems with respect to the appearance of the property.

iii) Position of the Development Officer, Mr. J. Xie

[13] The Development Officer appeared at the hearing to respond to the Board's questions.

[14] He informed the Board that a prior inspection of the subject property in 2014 revealed a business being run out of the truck but also that he had nothing beyond a note from an enforcement officer supporting that claim.

[15] He further stated that, if the Appellant's company is not operating as a business, he should take down any advertising on the website and cease operations.

viii) Rebuttal of the Appellant

[16] The Appellant offered no arguments in rebuttal.

Decision

[35] The appeal is DENIED, and the decision of the Development Authority is CONFIRMED.

Reasons for Decision

[36] A Major Home Based Business is a Discretionary Use within the RF1 Single Detached Residential Zone.

[37] In the course of the hearing, the Appellant indicated that this business is dormant. Although there is an incorporated company, it is not active in any way.

[38] The Appellant's pickup truck is not used for business purposes but simply as a personal vehicle. It has no logo on it and no welding equipment in the back of it.

[39] The Board is of the view that, because of these facts, there is no need for a Home Based Business development permit, either Major or Minor, and therefore upholds the Development Officer's decision not to grant a development permit.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC:

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*, R.S.A. 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.

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.