

*Edmonton Subdivision and  
Development Appeal Board*

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5 Natalia Way  
St. Albert, AB T8N7P4

DATE: March 6, 2015  
PROJECT NO.: 163876318-001  
FILE NO.: SDAB-D-15-033

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated January 22, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations (front Driveway extension, existing without permits)

On Plan 0221258 Block 31 Lot 21, located at 336 - Calderon Crescent NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 19, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed outside of the allowable 14 day appeal period, pursuant to the requirements of Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

The Board heard from the Appellants, Mr. K. Makarow and Ms. C. Makarow who advised that they reside in the City of St. Albert and pick up their mail from a Canada Post super-box site. Ms. C. Makarow advised that she picked up the notice of refusal in the mailbox on January 9, 2015 and the appeal was subsequently filed on January 22, 2015.

MOTION:

that the Board assumes jurisdiction.

## REASON FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board applied the provisions of Section 686(1)(a)(i) of the *Municipal Government Act*, and therefore finds that the appeal was filed within the allowable 14 days, since notice of the decision was received on January 9, 2015, and the appeal was filed on January 22, 2015.

## SUMMARY OF HEARING (CONTINUED):

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations (front Driveway extension, existing without permits), located at 336 - Calderon Crescent NW. The subject site is zoned RSL Residential Small Lot Zone. The development permit application was refused because of an excess in the maximum allowable width of a Driveway and because the Driveway does not lead directly from the roadway to the required Garage or Parking Area.

The Board notes that one letter of support was received from an adjacent property owner; one letter of opposition was received from an affected property owner prior to the hearing; a written submission along with a Memorandum from Transportation Services was received from the Development Authority; and a copy of each is on file.

The Appellants, Mr. K. Makarow and Ms. C. Makarow provided the following information in support of the appeal:

1. The extension was developed to provide a sloped concrete swale between their property and the neighbor to the east to address drainage problems.
2. Prior to the construction of the extension, their walkway leading to the front entrance of their house would ice up during the winter and the grass between the properties would be wet all summer.
3. They were advised by the Development Officer that Transportation Services and Drainage Services did not have sufficient time to review their application and therefore the permit application would be refused. They were also advised that the Current Planning Branch always refuses development permit applications for driveway extensions.
4. There are no public sidewalks in this cul-de-sac.

They provided the following responses to questions:

1. They applied for a Compliance Certificate during the sale of the subject house and it was brought to their attention that a Development Permit is required for the driveway extension.

2. The driveway extension benefits both their property as well as the adjacent neighbour's property. Since the extension is owned jointly with that neighbour, they wonder whether they should have made a joint application for the permit.
3. The extension has existed since 2005 but was never intended or used to provide additional parking since they have sufficient parking in their garage and on their driveway.
4. Gravel was not an option for the extension as it creates a porous and uneven surface that will not allow water in the area to drain properly away from their house. As well, there is a manhole cover on that portion of the extension.
5. They addressed the concerns of a property owner to the east regarding snow removal and advised the Board that they have never cleared snow onto neighbouring properties.
6. It was their opinion that the extension could be considered as part of the walkway.
7. They stated that the extension was characteristic to the neighbouring area as a similar swale was constructed between 340 and 344 Calderon Crescent.

**DECISION:**

that the appeal be **ALLOWED** and the development **GRANTED** and the excess in the maximum allowable width of a Driveway be permitted and the requirements of Section 54.1(4) of the Edmonton Zoning Bylaw waived.

**REASONS FOR DECISION:**

The Board finds the following:

1. The proposed development is an exterior alteration to a Permitted Use in the RSL Residential Small Lot Zone.
2. The Board notes that a Driveway extension was constructed in 2005 without a Development Permit. However, prior to the Edmonton Zoning Bylaw amendment passed in 2011, the Edmonton Zoning Bylaw did not contain regulations regarding the maximum allowable width of a Driveway.
3. The Board further notes that the Driveway extension leads towards the front entrance of the Principal Dwelling and therefore could be considered a walkway.
4. The Board accepts the hardship resulting from drainage problems that exist between the subject Site and the immediate neighbouring property to the east. The Driveway extension that has been developed between these properties corrected the drainage issue and benefits both properties.

5. Based on the submission of the Appellants, the proposed development is characteristic of the neighbourhood.
6. The Board notes that there is one letter of objection which raised concerns about snow accumulation and removal. However, based on the evidence provided, the Board finds that the existing Driveway extension does not impact snow accumulation and removal in this area.
7. Based on the above, it is the opinion of the Board, that the proposed development would 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.

### **IMPORTANT INFORMATION FOR 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

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.

Ms. D. Poon Phillips, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

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102, 7 – Granite Drive  
Stony Plain, AB T7Z 1V8

DATE: March 6, 2015  
PROJECT NO.: 150940338-001  
FILE NO.: SDAB-D-15-034

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated January 27, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with attached Garage, front veranda, fireplaces, rear uncovered deck (5.79 metres by 4.27 metres), rear covered deck (10.06 metres by 4.27 metres), and basement development (not to be used as an additional Dwelling)

on Plan 6773MC Blk 15 Lot 2, located at 3920 - Aspen Drive West NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 19, 2015. The decision of the Board was as follows:

**SUMMARY OF HEARING:**

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with attached Garage, front veranda, fireplaces, rear uncovered deck (5.79 metres by 4.27 metres), rear covered deck (10.06 metres by 4.27 metres), and basement development (not to be used as an additional Dwelling), located at 3920 - Aspen Drive West NW. The subject site is zoned RF1 Single Detached Residential Zone and is located within the Mature Neighbourhood Overlay. The development permit application was refused because of an excess of one stall in the proposed front attached Garage and because the excess in the projection of the proposed Garage beyond the front wall of the principal building is not characteristic of the majority of existing Garages on the blockface.

## SUMMARY OF HEARING (CONTINUED):

The Board notes that several letters of opposition and one letter of support were received from affected property owners prior to the hearing, copies of which are on file. The Board also notes that a written submission was received from the Development Authority on February 17, 2015, a copy of which is on file.

The Board heard from Mr. E. Hammermeister, representing Graphtec Design, on behalf of the Appellant, who provided a detailed written submission, marked Exhibit "A". Mr. Hammermeister referenced his written submission and made the following points in support of the appeal:

1. The subject site is a large river lot and larger houses are generally developed on such lots.
2. A residential dwelling is situated to the north of the subject site; Aspen Drive West NW to the east; a public park to the south; and the North Saskatchewan River Valley System to the west.
3. Three of the existing seven houses on the blockface contain triple car garages and the proposed development will be the fourth house to contain a triple car garage.
4. Triple car garages are an inherent characteristic of the streetscape in this neighbourhood and the proposed design is proportionate to the lot size, width and depth. The Appellant wishes to build a similar house to the houses that exist on the block.
5. He referenced Exhibit "A", and stated that the house at 4104 Aspen Drive West NW is very similar to the proposed development in that the property abuts a public park and has a triple car garage with vehicle doors that face the abutting park. In his opinion, the proposed development should be considered and approved in the same manner.
6. He stated that he had previously discussed the proposed development with a Development Officer in October 2013 and had worked diligently with that Development Officer to address the variances required and the potential impacts such as aesthetics, sun-shadowing and massing effects to the adjacent neighbouring property.
7. A new Development Officer was assigned to the project in August 2014 and a new development review was initiated.
8. A neighbourhood consultation was conducted to address the three required variances including the proposed attached triple car garage, the garage protrusion beyond the principal dwelling, and the 40 percent rear yard setback.

## SUMMARY OF HEARING (CONTINUED):

9. He stated that a 3<sup>rd</sup> revision of the original plan was made in November 2014 following consultation with the neighbours and those plans eliminated the variance in the minimum required rear yard setback.
10. The house was shifted forward and sited 1.5 metres within the block face average which is allowed pursuant to the Mature Neighbourhood Overlay.
11. He stated no accessory building is being proposed on the subject site and the rationale for a larger garage is to store tools that would normally be stored in an accessory building in the rear yard.
12. He referenced the plot plan of the existing dwelling in comparison to the plot plan of the proposed dwelling and stated that the setbacks from the front lot line are similar.
13. He reviewed the purpose of the Mature Neighbourhood Overlay and pointed out that not every neighbourhood is the same and there is considerable diversity throughout the city.
14. It was his opinion that the Mature Neighbourhood Overlay is not intended to be a stringent set of rules, particularly for river valley lots, and that different considerations should be used for these lots.
15. It was his opinion that the proposed development does not exceed the maximum allowable requirements for development on this lot. As well, it complies with all geotechnical requirements.
16. The existing context must be considered as well as the trend towards densification and the need to provide more off-street parking.
17. It was his opinion that extensive consultation has been undertaken and he has attempted to address and follow up with all the concerns raised by neighbours as well as the Aspen Garden Community League. The first two plans encompassed much more massing than the final plan.
18. It was his opinion that the planning merits of the development were not considered and that the Development Officer's review of the proposal was based solely on the requirements of the current Edmonton Zoning Bylaw. The Development Officer did not consider the fact that similar variances were granted for existing houses that have been built on this block.
19. It was his opinion that the term "characteristic of the block" is subject to interpretation and he disagreed with the Development Officer's opinion that the proposed development does not contribute to the pedestrian friendly streetscape.



## SUMMARY OF HEARING (CONTINUED):

20. It was his opinion that many of the existing houses on the block have very wide driveways that have more of a negative impact on the pedestrian friendly nature of the street than the proposed development.
21. The proposed driveway is narrow and will allow vehicles to access the street without backing out across the public sidewalk.
22. The proposed garage vehicle doors do not face the front yard and therefore does not dominate the front elevation of the structure.
23. None of the neighbours who reside south of the subject site are opposed to the proposed development. The most affected neighbour to the north will benefit from this development because the revisions that have been made will ensure privacy and sunlight penetration and will not negatively impact the use and enjoyment of their property.
24. He referenced his written submission to illustrate that an attached double garage could be built without any variances but would have a much greater impact on the immediately adjacent neighbour to the north.
25. Every effort was made to design a high quality development that would make a positive contribution to the community.
26. Exhibit "B" is a letter of support for the development.

The Board then heard from Mr. M. Zentner, representing the Sustainable Development Department, who provided the following information:

1. He did not agree with the evidence provided by the Appellant regarding the number of triple car garages in this neighbourhood.
2. It was his submission that there are only two triple car garages in this neighbourhood, one at 4104 Aspen Drive West NW which was approved under a previous version of the Mature Neighbourhood Overlay and another one at 4020 Aspen Drive West NW which was approved prior to the adoption of the Mature Neighbourhood Overlay.
3. It was his opinion that the front door of the proposed house is set back too far from the street which does not maintain the pedestrian friendly character of the street.

Mr. M. Zentner provided the following responses to questions:

1. The setback of the door from the street reduces "eyes on the street" which relates to Crime Prevention through Environmental Design and diminishes the sense of security on the street.
2. The information provided about the front setbacks on the blockface do not all relate to the garage protrusions beyond the principal dwelling along the blockface.

## SUMMARY OF HEARING (CONTINUED):

3. The house at 4104 Aspen Drive West NW is very similar to the proposed development.
4. He acknowledged that the lots along this block are large but the building pocket is reduced because the rear yards abut the ravine.
5. The front façade of the proposed house is not characteristic of the block.
6. He did not grant the required variances due to the submitted community consultation which demonstrated that the majority of neighbours were opposed to the proposed development.
7. It was his opinion that garages with vehicle doors that do not face the roadway are not characteristic of this neighbourhood.
8. His primary concern is the proposed garage projection. Although the projection of the garage at 4104 Aspen Drive West NW is 14 metres, it was approved according to the regulations that were in place at that time. This development has to be reviewed according to the current Bylaw requirements.
9. Although three of the seven houses on this block may require variances if built today, it was his opinion that there is no hardship for the developer to comply with the requirements of the Edmonton Zoning Bylaw.
10. The rear setback requirement could be interpreted differently by different Development Officers. He used his discretion in an attempt to find the best fit for this neighbourhood.
11. He acknowledged that having a garage with vehicle doors that do not face the roadway would allow cars to exit the site driving forward which does balance some of his concerns regarding the pedestrian friendly nature of the development.

The Board then heard from Mr. M. Labbe, who resides immediately north of the subject site. Mr. Labbe made the following points in opposition to the proposed development:

1. It was his opinion that the proposed development requires too many variances that are not minor in nature and are uncharacteristic of the neighbourhood.
2. The variance required in the maximum allowed projection of the proposed garage is well outside of the blockface average of the majority of the garages in the neighbourhood and is not characteristic of existing development along the street.
3. He reiterated that the existing triple car garages in this neighbourhood were constructed according to the requirements of the old Edmonton Zoning Bylaw and Mature Neighbourhood Overlay.

## SUMMARY OF HEARING (CONTINUED):

4. Several houses in this neighbourhood have verandas which are characteristic of this neighbourhood.
5. Every effort was made to site their own house closer to the front property line and consult with the neighbours.

Mr. M. Labbe provided the following responses to questions:

1. It was his opinion that the pedestrian friendly streetscape can be retained by locating the front door closer to the front property line.
2. It was his opinion that the proposed development could possibly devalue his property.
3. Although he had similar concerns regarding the development at 4104 Aspen Drive West NW, community consultation was never undertaken.
4. He believes that front drive garages are more suitable for this neighbourhood.

The Board then heard from Mr. B. Brinkman and Ms. L. Brinkman, affected neighbours who appeared in opposition to the proposed development and provided the following information:

1. She reiterated that community consultation was not undertaken during the redevelopment of 4104 Aspen Drive West NW.
2. It was her opinion that the proposed development is pushing the design envelope and the requirements of the Mature Neighbourhood Overlay which were implemented to protect residents in mature neighbourhoods.
3. It was his opinion that the proposed development should comply with the spirit and intent of the City's Mature Neighbourhood Overlay guidelines.
4. The projection of the garage is excessive and is not characteristic of the neighbourhood.
5. However, he would be open to more consultation if the required variances were reduced.
6. There are only two other triple garages in their neighbourhood. Their own garage has a third bay which is used as a hobby room.
7. They confirmed that the Community League is opposed to the development.

## SUMMARY OF HEARING (CONTINUED):

Mr. E. Hammermeister made the following points in rebuttal:

1. The proposed veranda faces the park to the south, which in his opinion, maintains the pedestrian friendly streetscape.
2. He referenced the blockface diagram in his written submission to illustrate that the front doors of most of the houses on this block are set back from portions of the house that are closer to the street.
3. Similar houses that were built according to the provisions of the previous Edmonton Zoning Bylaw would now be considered uncharacteristic of this neighbourhood if they were reviewed using the requirements of the current Edmonton Zoning Bylaw.
4. One of the existing houses has a 2 and a half car garage that is sited closer to the street than the proposed garage.
5. It was his opinion that the proposed development is appropriate for the subject site, at the end of the block, adjacent to a park.
6. Community consultation was undertaken during the development of the house at 4104 Aspen Drive West NW and there was no opposition.

## DECISION:

that the appeal be ALLOWED and the development GRANTED and the excess of one vehicle stall allowed in the Garage and the excess of 8.26 metres in the maximum allowable protrusion of the Garage beyond the front wall of the Principal Building be permitted, subject to the following conditions:

1. The Height of the principal building shall not exceed 8.6 metres nor 2 ½ Storeys as per the Height definition of Section 6.1(49) of the Edmonton Zoning Bylaw 12800;
2. Any future deck development greater than 0.6 metres (2 feet) in Height will require development and building permit approvals;
3. The proposed Basement development(s) shall NOT be used as an additional Dwelling. An additional Dwelling shall require a new Development Permit application;
4. Dwelling means a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household;
5. The area hard surfaced for a Driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Edmonton Zoning Bylaw 12800;

## DECISION (CONTINUED):

6. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Edmonton Zoning Bylaw 12800;
7. Eave projections shall not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater. (Reference Section 44.1(a));
8. For Single-detached Housing, Semi-detached Housing and Duplex Housing, a minimum Private Outdoor Amenity Area shall be designated on the Site plan. Neither the width nor length of the Private Outdoor Amenity Area shall be less than 4.0 metres. The Private Outdoor Amenity Area may be located within any Yard, other than a Front Yard, and shall be permanently retained as open space, unencumbered by an Accessory Building of future additions. (Reference Section 47);
9. Lot grades must match the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.

## Engineering Services Advisements:

The supplemental letter adequately addressed the three primary concerns identified in our previous review, notably that:

- The soil stratigraphy was re-analyzed to include a till layer within the soil stratigraphy;
- The geotechnical assessment was explicitly completed in context of the City Top of Bank Policy C542; and
- The survey plot plan for the property was reviewed and in complete accordance with the setback distances for the property.

Based on the information provided, it appears that our previously provided concerns have been adequately addressed and that the geotechnical consultant has provided confirmation that their assessment was prepared in accordance with the minimum requirements and currently adopted levels of landslide safety for the City of Edmonton, as per the intent of City Policy C542. The geotechnical consultant has provided qualified Professional opinion that the land may be used safely for the development intended, respecting the development restrictions recommended in the geotechnical report. Therefore, based on the available information, it would appear that the applicant through the consultant has adequately met the intent of Section 14.1 and Section 811 of the Zoning Bylaw.

## DECISION (CONTINUED):

It must be reiterated that the recommendations for site development guidelines and restrictions outlined in the geotechnical report for the property must be strictly adhered to for any proposed development of the site. In addition, the resident is also encouraged to become familiar with the site management guidelines and to follow them. Such restrictions are proposed not to be punitive, but rather to improve the long term viability of the property and reduce risk.

The following development restrictions are highlighted together with those outlined in the geotechnical report:

- No water retention structure shall be constructed or installed, such as swimming pools, ornamental ponds, or other permanent structures designed to retain water on or below the ground surface.
- No permanent sprinkler or irrigation systems shall be constructed or installed.
- Roof leaders, downspouts, and sump pumps shall not be allowed to discharge on or below the ground surface. They shall be connected to the storm sewer system.
- Grading, landscaping, and construction excavations shall not allow any ponding of water or the focused discharge of water toward the ravine slopes. Surface runoff shall be directed away from the slopes and into the storm drainage system, wherever possible.
- No fill materials shall be placed unless such fill is placed in accordance with the approved lot grading plan. No fill or other development shall be undertaken within the building setback area, nor on the slopes.
- The retention and enhancement of existing vegetation and vegetative cover during site development is considered highly desirable, and all vegetation on the slopes and within the building setback area shall be maintained.

Recommendations pertaining to the management of water at the site and adherence to the related restrictions concerning water retention structures and permanent irrigation systems are expected to be of high importance in order to reduce the risk of erosion and instability. Failure to comply with any of the recommendations of the geotechnical consultant or noted above could either hasten or increase the severity of any slope instability which could ultimately threaten the property and residence.

## DECISION (CONTINUED):

Should this development ultimately be approved to proceed, the geotechnical consultant, and with the consultant's inspection, to confirm that the recommendations presented in the geotechnical report have been properly interpreted and implemented.

The developer and owner must be aware that there remains some residual risk of instability of the slopes below the subject property that could lead to a loss of property within the life span of the proposed development. The owner must also recognize that the City of Edmonton will assume all erosion and regression of the slopes to be natural in origin, and that the City of Edmonton will not undertake any remedial repairs, irrespective of the ownership of the land between the development and the ravine slopes.

Relative to foundation construction for the new residence, it is also recommended that inspections by qualified geotechnical personnel be undertaken during construction to confirm the removal of fill and any deleterious materials and to verify that recommended foundation design and construction procedures are followed.

## Notes:

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaw or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2)

Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.

The applicant is advised to research the Land Title for this property and to be aware of any restrictions in the Restrictive Covenant. This approval does not imply consent for any structure that does not meet the requirements of the Restrictive Covenant.

## REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF1 Single Detached Residential Zone.

## REASONS FOR DECISION (CONTINUED):

2. The proposed development complies with the general purpose of the Mature Neighbourhood Overlay to ensure that new low density development in mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations for the following reasons:
  - a) Based on the evidence provided, there are at least two other triple car Garages existing on this blockface.
  - b) The proposed attached Garage with vehicle doors that do not face the roadway is not atypical of this street. Based on the evidence provided, there is a similarly sited development located at the north end of this block.
  - c) The subject site is a unique large lot with a narrow front Driveway and the proposed design will ensure privacy and sunlight penetration for the most affected property owner who resides immediately north of the subject Site.
  - d) Vehicles will have the ability to exit the Driveway without backing onto the public sidewalk which will improve pedestrian safety.
3. The Front Setback of the proposed development is similar to the Front Setback of the existing development on the subject site and complies with the average Setback along the blockface.
4. The Board acknowledges the objections of neighbouring property owners who reside within the 60 metres notification radius and the Aspen Garden Community League regarding the variance required in the maximum allowable protrusion of the proposed Garage. However, the Board finds that this regulation was implemented for typical Garages with vehicle doors facing the public roadway. The Board finds the visual impacts of a Garage with vehicle doors that do not face the public roadway is less than those that face the public roadway. Typically, a Garage with vehicle doors that do not face the public roadway is designed to look as part of the main Dwelling when viewed from the blockface as in this case. The proposed triple car Garage contains compatible architectural elements of the front elevation of the Dwelling such as similar massing, materials, and offsets of the window as depicted in the submitted drawings.



## REASONS FOR DECISION (CONTINUED):

5. Further, the Board finds the visual impacts of the proposed attached triple car Garage is minimal as the vehicle door faces the park to the south. The Board notes that none of the neighbours to the south of the proposed development have indicated any objection.
6. Based on the above, the Board is satisfied that the proposed development is reasonably compatible with the neighbourhood and 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.

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4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

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.

Ms. D. Poon Phillips, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

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344 - Hunters Run NW  
EDMONTON, AB T6R 2N9

DATE: March 6, 2015  
APPLICATION NO: 163680256-001  
FILE NO.: SDAB-D-15-011

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated December 17, 2014, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business from December 3, 2014 to December 3, 2019 (printing and applying 3M hood protection film)

on Lot 7, Block 3, Plan 9623659, located at 344 - Hunters Run NW, was heard by the Subdivision and Development Appeal Board at its hearing held on January 21, 2015 and February 19, 2015. The decision of the Board was as follows:

**January 21, 2015 Hearing**

SUMMARY OF HEARING:

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.

At the outset of the hearing, the Presiding Officer addressed a preliminary matter involving a potential tabling of the appeal hearing due to the non-appearance of the Respondent.

The Board heard from Dr. V. Lappi, the Appellant, who made the following points:

1. He would like the appeal hearing to proceed.
2. His neighbor, Mr. K. Reed, informed him that the Respondent verbally told him that he had no intention of attending the appeal hearing and intends to cancel his development permit.

## SUMMARY OF HEARING CONTINUED:

The Board then heard from Ms. K. Mark, representing the Sustainable Development Department, who made the following points:

1. She recently spoke with the property owner and his business partner and encouraged them to attend the appeal hearing.
2. She was of the understanding that the Respondent was going to attend the appeal hearing as he was aware of the appeal date and time.
3. She did not receive any information that the Respondent wanted to cancel the Development Permit.

## DECISION:

that the appeal be TABLED to February 18 or 19, 2015 due to the non-appearance of the Respondent.

## REASONS FOR DECISION:

The Board finds the following:

1. The Board recognizes the effort of the Appellant and neighbouring property owners to attend the appeal hearing.
2. The Respondent had a conversation with the Development Authority and he was aware of the date and time of the appeal hearing and indicated he intended to attend the appeal hearing.
3. In the interest of hearing both parties and the sake of natural justice, the Board tables the appeal hearing to allow the Respondent to attend the appeal hearing.

**February 19, 2015 Hearing**

## MOTION:

that SDAB-D-15-011 be raised from the table.

## SUMMAR OF HEARING:

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 (CONTINUED):

The Board heard an appeal of the decision of the Development Authority to approve an application to operate a Major Home Based Business from December 3, 2014 to December 3, 2019 (printing and applying 3M hood protection film), subject to conditions, located at 344 - Hunters Run NW. The subject Site is zoned RF1 Single Detached Residential Zone. The approved development permit application was subsequently appealed by an adjacent property owner.

The Board notes that seven letters were received in opposition to the proposed development with the initial appeal. No letters were received in support of the proposed development.

Prior to the hearing, the Development Authority submitted documentation to support the approved permit.

The Board heard from the Appellant, Dr. V. Lappi, who made the following points in support of the appeal:

1. It was his understanding that the permit for the proposed home based business would be cancelled by the Respondent because of neighbourhood opposition.
2. He and the Respondent have always been in an amicable relationship as good neighbours.
3. It was his understanding that the proposed business is for the benefit of a non-resident. The Respondent indicated that he was unaware of the application and was surprised an approval was granted. Dr. Lappi questioned whether they are partners.
4. The subject site is located on a cul-de-sac with limited on-street parking and one main entrance into the neighbourhood.
5. He expressed concerns about parking that will be required for employees and residents.
6. There are four vehicles registered to this address with typically four to five vehicles parked at the subject site. There are two vehicles in the garage; two on the driveway; and one on the street.
7. He questioned if it was feasible for all of the proposed work to be conducted inside the garage. He was also concerned about where the vehicles that are usually parked inside the garage as well as on the driveway will be relocated.
8. It was his opinion that this will result in more vehicles being parked on the street which is contrary to the conditions imposed.

## SUMMARY OF HEARING (CONTINUED):

9. He expressed concerns regarding increased traffic in this cul-de-sac generated by the proposed business.
10. In addition, he is concerned that the proposed business will bring strangers into the neighbourhood and has the potential to create a safety concern.
11. It was his opinion that this type of business is usually carried out in a commercial or industrial area and not a residence.
12. The application of 3M protective film requires that the surface of vehicles be prepared by washing and in some cases using solvents. For practical and health and safety reasons, it is unlikely that this will occur in the enclosed garage and will in all likelihood occur on the driveway or the street.
13. He referenced Section 75.9 of the Edmonton Zoning Bylaw and suggested that the proposed development would be more compatible to and appropriately located in an industrial area.

The Board then heard from the following affected property owners who appeared in opposition to the proposed development.

Ms. J. Tajcnar made the following points:

1. She and her husband are original residents of this neighbourhood.
2. The proposed business will bring more vehicles and traffic into their neighbourhood.
3. They are concerned about thefts that may occur because of non-residents frequenting the neighbourhood.
4. The onus to monitor the operation of the proposed business falls to the neighbours and identified problems will take time to be resolved.
5. They have received advice from a personal friend who operates an auto body business. As well, based on personal experience, vehicles will have to be moved on and off the subject site and will result in problems for neighbouring property owners.
6. She also expressed concern that the proposed business could expand by offering additional automotive services in the future.
7. The service being offered requires automobiles to be clean, and water from that process will be going into the sanitary system.
8. The proposed business is not characteristic of the neighbourhood.

## SUMMARY OF HEARING (CONTINUED):

Mr. L. Forys provided the following information:

1. He stated that the Respondent is a wonderful neighbour and his opposition to the proposed development was not personal.
2. It was his opinion that a major home based business is not suitable for this single detached neighbourhood because of the associated traffic and parking problems.
3. The proposed business will also bring transients into the neighbourhood and could negatively impact property values.
4. He expressed concern regarding the process and suggested that neighbours should have been consulted before the permit was issued.

Mr. P. Morgan made the following points:

1. He reiterated the concerns that had already been addressed.
2. The proposed development will negatively impact this quiet residential neighbourhood.
3. Although they live outside the 60 metre notification radius, they are affected by the traffic that enters the neighbourhood since all access must pass by their property.

Ms. Y. Liu made the following points:

1. She is concerned about increased traffic and parking as this has been an issue on the cul-de-sac especially during the holiday seasons.
2. The City's Bylaw Enforcement Officers have been to their neighbourhood in the past to address parking problems.
3. It was her opinion that potential buyers will view the operation of a business in this area as detrimental.

Dr. J. Lukey made the following points:

1. She agreed with all of the concerns raised by her neighbours.
2. She has experienced parking problems with her car and camper that is parked out front during the summer months.

## SUMMARY OF HEARING (CONTINUED):

3. It was her opinion that increased traffic and parking associated with the proposed business will be problematic.

The Board then heard from the Respondent, Mr. N. Wijayanayaka, who submitted a copy of the Installation Instructions for 3M Paint Protection Film and a copy of the Material Safety Data Sheet, marked Exhibit "A". Mr. Wijayanayaka provided the following information in support of the proposed development:

1. He clarified that he is the owner of the proposed business.
2. It was his opinion that the City should promote the operation of small scale businesses.
3. He expressed concern regarding the process followed by the City and explained that he did not understand the processes and procedures.
4. His partner submitted the application and he was therefore surprised to receive the approved development permit.
5. It was his opinion that input should have been sought from neighbours prior to the approval being issued because it has caused a division in the neighbourhood.
6. He works in the automotive field and would never do anything irresponsible or detrimental to his neighbourhood.
7. He wants to test his business on a small scale from his residence.
8. Parking will not be a problem because his daughter has moved out which reduces the number of vehicles parked at his residence.
9. His van was recently stolen and there are now only three vehicles parked at his residence, two vehicles in the garage and one on the driveway.
10. The proposed business will be small, perhaps only servicing three vehicles per week.
11. He only plans to operate his business from April to October which will not impact parking during the winter months.
12. Harmful chemicals are not used for this process and there will be minimal washing of vehicles.
13. He was concerned about the impact of his business on his neighbours but his application was approved because it complied with the development criteria.
14. Only three vehicles will be serviced per week and it is his intention to provide the service primarily to family, friends and acquaintances.
15. The business will be operating from his residence and he would never do anything to jeopardize the safety of his own family.



## SUMMARY OF HEARING (CONTINUED):

16. Customers will be driven out of the neighbourhood while their vehicles are being serviced.
17. Two of his neighbours operate landscaping businesses and often park equipment on the street during the summer months.
18. Even if his application is approved, he will not proceed if his neighbours are still opposed.
19. There are other home based businesses in the neighbourhood, specifically a hair salon.
20. Traffic is the only valid point brought up by his neighbours, but he feels that he has adequately addressed their traffic concerns.

Mr. N. Wijayanayaka provided the following responses to questions:

1. He will acquaint with his potential customers prior to providing service on their vehicles.
2. It was his opinion that 90 percent of the vehicles parked in the neighbourhood at any given time are non-residents, including contractors.
3. He will only have to move one vehicle out of the garage to service a customer's vehicle. His personal vehicle can be parked on the street.
4. There will not be any customer's vehicle parked on the street.

The Board then heard from Ms. K. Mark, representing the Sustainable Development Department, who provided the following information:

1. She reviewed the information provided on the development permit application prior to making her decision.
2. The application was made in partnership with the property owner.
3. She was surprised by the evidence provided by the Respondent that he did not know about the application.
4. It was her opinion that the impacts of the proposed business were minor in nature.
5. The proposed business only uses basic household products and will operate during typical working hours.

She provided the following responses to questions:

1. She conceded that the Appellants had some valid concerns but noted that most of the concerns were conjecture.
2. She stated that enforcement of the conditions imposed on the approved permit are complaint driven and are investigated by a Bylaw Enforcement Officer.

## SUMMARY OF HEARING (CONTINUED):

Dr. V. Lappi made the following points in rebuttal:

1. He expressed concerns regarding the appeal process and suggested that an Appeals Advisor should be provided at no cost to property owners who file an appeal against the decision of the Development Authority.
2. It was his opinion that the proposed conditions are reasonable but not enforceable.
3. He reiterated his concerns about traffic, parking and safety as a result of customers frequenting the proposed home based business.

## DECISION:

that the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED

The Development Authority's approval contains the following conditions:

1. This Development Permit may be revoked or invalidated, at any time, if the Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes. This includes mechanical or electrical equipment used which creates external noise or interference with home electronic equipment in adjacent Dwellings. (Reference Section 23.5);
3. Any expansion of the business such as an increase in customers, addition of employees, changes to the hours of operation, or additional equipment requires that a new Development Permit MUST be obtained;
4. This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business from this location after December 3rd, 2019;
5. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 centimetres (8 inches) by 30.5 centimetres (12 inches) in size located on the dwelling;
6. The business Use must be secondary to the residential Use of the building and no aspects of the business operations shall be detectable from outside the property;
7. Only 1 employee shall work at the site at one time; any increase in employees working on site will require a separate Development Permit application and approval;
8. There shall only be one client vehicle at the site at one time; client visits shall not overlap;

## DECISION (CONTINUED):

9. All work associated with the Major Home Based Business must occur within the attached garage;
10. No client or employee vehicles shall be stored on neighbouring properties nor shall they be stored on the public road right-of-way;
11. The hours of operation for the Major Home Based Business must be from 9am - 5pm; any change in operation hours will require a new Development Permit;
12. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced;
13. The business Use shall not involve the use of commercial vehicles or vehicles weighing over 4500 kg;
14. The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighbourhood;
15. No commodity(ies) shall be displayed on the premises;
16. There shall be no outdoor storage of materials associated with the business;
17. All parking for the Home Based Business must be accommodated on site. Parking on the street in conjunction with this Home Based Business is not permitted. All parking related to the business shall take place at an approved private property location (Reference Section 54.2(2)(a) of the Edmonton Zoning Bylaw);
18. There is absolutely no outdoor business-related activities at any time;
19. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility when not in use. The Development Permit will be revoked if any commercial, industrial and overweight vehicles are parked/stored on the Residential Site;
20. Residential properties do not store dangerous goods;
21. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

## REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone.

## REASONS FOR DECISION (CONTINUED):

2. The Board finds that the proposed development is reasonably compatible with the neighbourhood for the following reasons:
  - a) The proposed Major Home Based Business complies with all of the development regulations for a Major Home Based Business, pursuant to Section 75 of the Edmonton Zoning Bylaw.
  - b) The Board is satisfied that the proposed development will not create additional noise, traffic or parking that would be uncharacteristic of the neighbourhood.
  - c) The Board is satisfied that the conditions imposed by the Development Authority will address the concerns of the Appellant and other affected property owners regarding traffic, parking and customer related visits.
  - d) The Appellant acknowledged that the conditions imposed on the approved development permit were reasonable but, in his opinion, unenforceable.
  - e) Any breach or violation of the imposed conditions will be enforced through a Bylaw Enforcement Officer.
  - f) Any expansion of the Major Home Based Business, including an increase in customer visitors or employees, would be subject to a new development permit application.
  - g) The concerns submitted by the Appellant and neighbouring property owners regarding the type of clientele for the proposed home based business is outside the purview of the Board and is not a planning consideration.
  - h) The proposed Major Home Based Business has only been approved for a period of five years which will allow time for neighbouring property owners to monitor and assess the impact of the proposed development and provide feedback to the Sustainable Development Department.
3. Based on the above, it is the opinion of the Board, that the proposed development, with the conditions imposed, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

**IMPORTANT INFORMATION FOR APPLICANT/APPELLANT**

1. **THIS IS NOT A BUSINESS LICENSE.** A Business License must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

2. 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.
3. For further information regarding the expiry of a development permit for failure to commence business operations within one year, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. 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.
5. 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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

Ms. D. Poon Phillips, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.