



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca

Date: March 8, 2018
Project Number: 257047913-001
File Number: SDAB-D-18-034

Notice of Decision

- [1] On February 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 26, 2018. The appeal concerned the decision of the Development Authority, issued on January 23, 2018, to refuse the following development:

Construct a Semi-Detached House with a veranda

- [2] The subject property is on Plan 1458AQ Blk 5 Lot 2, located at 12045 - 95 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Alberta Avenue / Eastwood Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer’s written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Written submission and photos from the Appellant

Preliminary Matters

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

Summary of Hearing

i) Position of the Appellant, Vida Nova Homes

- [8] Mr. T. Fernandes appeared to represent Vida Nova Homes and reviewed his written submission with the Board, marked Exhibit A. He has been building similar developments in the immediate area for the last five years and also lives in one of them.

Site Setback

- [9] When the Appellant first submitted his application, he complied with the front setback requirement. A new bylaw came into effect on September 1, 2017, and he now requires a variance.
- [10] The house immediately to the south is uncharacteristic of the block because it is set back more than double than that of any of the other homes along the blockface.
- [11] The Appellant showed the plot plan of the proposed development and photos of the original home on the site. The proposed development will be set back further than the original home on the lot and will be in line with the adjacent home to the north.

Site Area

- [12] Very few of the 33 foot-wide lots in this area would ever be able to meet the minimum required site area of 442.4 square metres as they are too short. Vida Nova Homes have built thirteen front-to-back Semi-detached homes in this area, with three more under construction, and only one was able to meet the minimum required site area.
- [13] The subject lot is five feet longer than those that are south of 118 Avenue where he usually builds which is allowing him to increase the size of the living area on the main floor and to build a bigger ensuite on the second floor. He showed floor plans to show how this extra five feet allows him to design a better floor plan.
- [14] He did not have time to do community consultation for this appeal but he has consulted with many of the property owners within the same notification area when developing similar properties in the immediate area.
- [15] Front-to-backs style homes are helping bring new life to Alberta Avenue because they are affordable and growing in popularity among young couples and families that want to be close to downtown.
- [16] Mr. Fernandes provided the following responses to questions from the Board:
- a) He estimated that the house immediately to the south was most likely built in the 1960's. It is a bungalow approximately 750 square feet in size and is built well into the back yard.

- b) He is not able to set the proposed development back the required 7.63 metres as he would not meet the 40 percent rear yard requirement.

ii) *Position of the Development Officer, Mr. B. Langille*

[17] The Development Authority was not present and the Board relied on his written submission.

Decision

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

1. This Development Permit authorizes the development of a Semi-Detached House with a veranda. The development shall be constructed in accordance with the approved drawings.
2. The Height of the principal building shall not exceed 8.9 metres as per the Height definition of Section 6.1(54) of the *Edmonton Zoning Bylaw*.
3. Any future basement development may require development and building permit approvals.
4. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.5 metres above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
5. Platform Structures greater than 1.0 metres above Grade shall require a separate development permit and shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties.
6. All unenclosed steps shall not project more than 0.60 metres into required Setbacks of 1.20 metres or greater (Reference Section 44.1(a)).
7. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2.
8. Landscaping shall be developed in accordance with Section 55 of the *Edmonton Zoning Bylaw*.
9. A. Landscaping shall be provided on a Site within 18 months of the occupancy of either dwelling. Trees and shrubs shall be maintained on a Site for a minimum of

42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).

- B. Two deciduous trees with a minimum Caliper of 50 mm, two coniferous trees with a minimum Height of 2.5 metres and eight shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
- C. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).

Development Advisements:

- i.) Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii.) Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals
- iii.) Any future deck enclosure or cover requires a separate development and building permit approval.
- iv.) The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.
- v.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx

[19] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The minimum required Site Area of 442.20 square metres pursuant to Section 140.4(3)(a) is varied to allow a deficiency of 58.18 square metres, thereby decreasing the minimum required to 384.02 square metres.
2. The minimum required Front Setback of 7.63 metres pursuant to Section 814.3(1) is varied to allow a deficiency of 2.73 metres, thereby decreasing the minimum required to 4.9 metres.

Reasons for Decision

- [20] Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [21] In granting the variance to the minimum required Site Area, the Board concurs with the Development Officer's view that this variance will have no adverse impact on the neighbouring properties or the amenities of the area.
- [22] The Board notes that front to back Semi-detached Housing already exists in the area and is characteristic of the neighbourhood.
- [23] In waiving the requirements with regard to the minimum required Front Setback, the Board notes the following:
- a) The application of section 814.3(1) requires that the Setbacks of abutting properties be considered and in fact the Board finds that the property abutting the south side of the subject site is uncharacteristic of the area. It has a Setback of more than twice that of any other development on the subject block and in fact distorts the calculation of Setback along the blockface.
 - b) The Board notes that the proposed 4.9 metre Front Setback is within 1.5 metres of the blockface average even when the property abutting to the south is included.
 - c) Further, the Board notes that a greater Front Setback than the proposed 4.9 metres would in fact trigger two other variances:
 1. To the minimum required 40 percent Rear Setback as per Section 814.3(4).
 2. To the minimum required Amenity Area as per Section 47.
- [24] The Board notes that a community consultation was undertaken by the Development Officer and no objections were noted. Further, no letters of opposition were received by the Board nor did anyone attend in opposition to the proposed development.
- [25] The Board finds that the proposed development with the variances granted and conditions imposed 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.

Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present

Mr. M. Young; Mr. R. Hachigian; Ms. E. Solez; Mr. K. Hample

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: March 8, 2018
Project Number: 260326944-001
File Number: SDAB-D-18-035

Notice of Decision

- [1] On February 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 24, 2018. The appeal concerned the decision of the Development Authority, issued on January 27, 2018, to refuse the following development:

Operate a Major Home-Based Business (Repair cellphone and tablet - Dr. Fix Wireless Ltd, expires Jan 17, 2023)

- [2] The subject property is on Plan 5765Q Blk 9 Lot 30, located at 10848 - 73 Avenue NW, within the RF6 Medium Density Multiple Family Zone. The Medium Scale Residential Infill Overlay applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- One online response.

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

- Exhibit A – Photos from the Appellant
- Exhibit B – E-mail from Development Officer to the Appellant dated November 8, 2017

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) *Position of the Appellant, M. Zhang*

- [8] Mr. Zhang disputes that this business should be classed as a General Retail Store. While he did sell phone accessories in the past, he mainly repairs cell phones now.
- [9] The October 23, 2017 inspection photos in the Development Officer’s written submission are no longer applicable. He has followed the recommendations in the Development Officer’s e-mail dated November 8, 2017, and has changed the property back to a Single Detached House. He feels he has complied with all of her suggestions and has reduced the floor area of the business so it now occupies a total floor area of only 10 feet by 10 feet. He showed photos of what his work area currently looks like (marked Exhibit A) and stated the he only uses small tools such as a screw driver.
- [10] He believes the property now meets the definition of “Dwelling” as per Section 6.1(31) of the *Edmonton Zoning Bylaw*:

A self-contained unit compromised 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.

- [11] He disagrees with the Development Officer that the building appears commercial. He checked online and could not find any specific rules as to what that means. Different people have different opinions and he believes that the property appears to be a home.
- [12] He disagrees with the statement contained in the third reason for refusal that reads:

“The main floor is developed as a commercial retail store and the rest of the house appears to be the staff room, office, and storage for the proposed business, contrary to section 75.6.”

He showed photos of the basement (Exhibit A) which show he has printers, storage boxes, garden tools and other personal effects that are not related to his business. He uses his basement for storage as he does not have a garage and there is no staff room located in the basement. He also showed photos of the main floor area which showed the kitchen and bathroom area.

- [13] The property is located on a corner lot and he has improved the appearance from 109 Street by doing some landscaping.
- [14] He does not agree with the online response that suggested that parking is an issue:
- a) The corner lot location provides plenty of parking possibilities and parking is permitted on both sides of the street in front of his home.
 - b) The subject property has no garage which allows for extra parking in the rear.
 - c) A Google photo dated May, 2017, confirms there is plenty of parking available.
 - d) Photos taken yesterday of cars parked along the street do not belong to his customers as he had no clients at the time these photos were taken.
- [15] He disagrees with the Development Officer that this business would be more appropriately located in a Commercial Zone. The scale of his business is too small for a commercial location and he cannot afford to rent a commercial space. He can focus on repair work if selling accessories is not permitted.
- [16] He provided the following responses to questions from the Board:
- a) He has lived at the subject site since he purchased it last year. He spent a couple of months doing renovations prior to moving in.
 - b) The address on his driver's licence shows a different property that he still owns. He has not yet changed it.
 - c) His work area occupies approximately 100 square feet of the 700 square foot main floor area. There is a kitchen and a bathroom located on the main floor in addition to his work area.
 - d) The glass display case shown in the Development Officer's photos has been removed but the display boards are still there. He can remove them as he sells very few accessories and focuses on repair work. He was not aware that he was not permitted to sell anything as this was not stated in the Development Officer's November 8, 2017 e-mail.
 - e) He confirmed there is an 8 by 11 paper sign on the door which refers to "walk-in" clients. This sign can be removed as customers always call for availability.
 - f) He has one part time employee; business has slowed down so he mostly works by himself.
 - g) He is willing to make any changes required. He confirmed that two inspections have been conducted; he did not request a third inspection.

h) He does not have a problem with any of the proposed conditions of the Development Officer should the Board grant his appeal.

ii) *Position of the Development Officer, Ms. R. Lee*

[17] The Development Authority did not attend the hearing and the Board relied on Ms. Lee's written submission.

Decision

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

Reasons for Decision

[19] Under Section 7.3(7) of the *Edmonton Zoning Bylaw*, a Major Home Based Business means (in part) development consisting of the Use of an approved Dwelling or Accessory building by *a resident of that Dwelling* for one or more businesses that may generate more than one business associated visit per day. *The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building.* This Use includes Bed and Breakfast Operations *but does not include General Retail Sales* (emphasis added).

[20] Evidence was submitted that a significant portion of the main floor of this bungalow has been converted for the purposes of the business and the business utilized display cases and display boards, indicative of a retail sales use.

[21] Based on the evidence submitted, the Board finds that the proposed development does not comply with the definition of a Major Home Based Business for the following reasons:

1. The Board is not persuaded that the subject property is the principal Dwelling of the property owner who acknowledged that it may be used "semi-permanently" as a residence.
2. The business Use appears to be the primary, not the secondary Use of the building.
3. The business Use changes the residential character of the Dwelling.

[22] The Board agrees with the finding of the Development Officer that the proposed development is a General Retail Store, which is neither a Permitted nor Discretionary in the RF6 Medium Density Multiple Family Zone.

[23] Pursuant to Section 687(3) of the *Municipal Government Act*, the Board cannot approve a Use that is neither Permitted nor Discretionary in the Zone.

[24] Thus, the Appeal is dismissed.

Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present

Mr. M. Young; Mr. R. Hachigian; Ms. E. Solez; Mr. K. Hample

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*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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