

## **Edmonton Subdivision and Development Appeal Board**

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Date: March 9, 2016  
Project Number: 185015294-001  
File Number: SDAB-D-16-060

### **Notice of Decision**

[1] On February 24, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 28, 2016. The appeal concerned the decision of the Development Authority, issued on January 18, 2016, to approve the following development:

operate a Major Home Based Business (Administration office for construction business - CBA CONSTRUCTION LTD).

[2] The subject property is on Plan 7721588 Blk 30 Lot 4, located at 12023 - 143 AVENUE NW, within the RF1 Single Detached Residential Zone.

[3] The following documents were received with respect to the hearing:

- Appellant's online postponement request, letters of support, and supporting information for the appeal;
- Home based business application and approved development permit; and
- Development Officer's written submissions and email correspondence from the Development Officer.

### **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*, RSA 2000, c M-26.

i) *Position of the Appellant, Ms. L. Proano*

[6] Ms. Proano's neighbours, the Respondents, have a home based masonry business. She does not object to their business, but is concerned that, as a result of the business, they burn toxic material that has caused respiratory issues for her and some of her neighbours. As a result of the smoke, she has to keep her windows closed during the summer months.

[7] Asked by the Board if she has reason to believe the Respondents' fire pit is related to their home based business, she advised she is not sure, but she questions the material being burned.

[8] Ms. Proano has contacted the fire department because of the smoke.

*ii) Position of the Development Officer, Mr. G. Robinson*

[9] Mr. Robinson approved the Respondents' Major Home Based Business subject to a condition in the development permit that provides that "no offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced".

[10] He confirmed that Community Standards has attended the subject Site and that fire pits are within the purview of Community Standards (not Sustainable Development).

*iii) Position of the Respondents, Ms. A Cortes and Mr. C. Brito*

[11] The Respondents advised the Board that their fire pit is for personal use, and has nothing to do with their home based business; they take most of the waste from the business to the garbage dump.

[12] The smoke in question was caused by a number of BBQs the Respondents had where they burned fire wood that was wet.

[13] They confirmed that the police have visited their property four or five times because they burned wet fire wood and leaves.

[14] They also confirmed that the fire department came to their house because they were having a fire during a fire ban, which they unaware of.

*iv) Rebuttal of the Appellant*

[12] The Appellant reiterated that she does not object to the Respondents' home based business, but remains concerned about her and her neighbours' respiratory health that has been compromised as a result of the smoke from the Respondents' fires.

**Decision**

[13] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

- [14] A Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [15] The Appellant made submissions with respect to health concerns she experienced related to the Respondents' use of their fire pit. While the Board acknowledges and empathizes with the Appellant and the health situation of the residents of the neighbouring condominium development, the purview of the Board's decision making authority is restricted to planning considerations, and the submissions made by the Appellant are enforcement issues to be handled by a By-law Enforcement Officer.
- [16] The Board is satisfied that the Respondents' fire pit at the subject Site is for personal use, and accepts the Respondents' evidence that they operate a masonry business, which has no use for a fire pit.
- [17] The Board is also satisfied that the Respondents are aware of condition seven in the Development Permit, which indicates that no offensive odour shall be produced as a result of the home based business, and that if they wish to have unfettered use of their development permit, they are obligated to abide by all of the conditions of the development permit.
- [18] The Board accepts the submissions of the Development Officer that the proposed Major Home Based Business would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. W. Tuttle, 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 5<sup>th</sup> 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.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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