

*Edmonton Subdivision and
Development Appeal Board*

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-496-8175
Email: sdab@edmonton.ca
Web: www.edmontontribunals.ca

SDAB-D-15-036

Project No. 162665810-001

An appeal to change the use from Convenience retail Store to a Restaurant (79.15 square metres of Public Space) and construct interior alterations on Plan 1021575, Block 19, Lot 24 was **TABLED** to March 19, 2015

*Edmonton Subdivision and
Development Appeal Board*

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-496-8175
Email: sdab@edmonton.ca
Web: www.edmontontribunals.ca

P.O. Box 52173 RPO Garneau
Edmonton AB T6G 2T5

DATE: March 13, 2015
PROJECT NO.: 163878727-001
FILE NO.: SDAB-D-15-037

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 29, 2015, from the decision of the Development Authority for permission to:

To convert a Semi-detached House to Apartment Housing (2 basements converted to 2 additional Dwellings), existing without permits

on Plan 8479ET, Block A, Lot 2, located at 12611 - 128 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 26, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

At the outset of the appeal hearing, the Chair 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 from the decision of the Development Authority to approve an application to convert a Semi-detached House to Apartment Housing (2 basements converted to 2 additional Dwellings), existing without permits, located at 12611 – 128 Avenue NW. The subject Site is zoned RA7 Low Rise Apartment Zone and is within the Medium Scale Residential Infill Overlay. The development permit application was refused because of numerous deficiencies pursuant to the regulations contained in Section 210 and Section 823 of the *Edmonton Zoning Bylaw*.

The Board notes that a written submission was received from the Development Authority prior to the hearing, a copy of which is on file.

The Board heard from Mr. Z. Koziak, the Appellant, and his son, Mr. P. Koziak, who provided the following information in support of the appeal:

SUMMARY OF HEARING (CONTINUED):

1. The basement suites existed when they purchased the building several years ago.
2. A health inspector came to inspect the property several years ago and did not advise them that the existing suites were illegal.
3. They did not realize there was a problem until they received notice from the City that the property was non-compliant and had to be re-classified to Apartment Housing.
4. Tenants have lived in the basement suites since they purchased the property.
5. The property was purchased during a real estate boom and they would lose money if they had to sell it in the current market. The income from the basement suites is required to make the mortgage payments.
6. It was their opinion that the building is a Duplex with basement suites and not Apartment Housing.
7. They own a similar property in another part of the City that has been approved.
8. All of the upgrades identified by the City have been completed, including the installation of new windows.
9. The existing structure is a Duplex and does not require the same site requirements as Apartment Housing.
10. The size of the lot cannot be changed and it was their opinion that it is not overbuilt and is characteristic of the neighbourhood.
11. It is impossible to meet the site and setback requirements for Apartment Housing on this lot.
12. None of the tenants have ever complained about the amenity area that is provided for all of the dwelling units.
13. This is a corner site with on street parking available on 128 Avenue.
14. Even though the driveways are not long enough to meet the requirements for legal parking spaces, they are long enough to accommodate most vehicles.
15. They would be willing to widen the parking pads if required.
16. No changes will be made to the existing structure or the subject site and it was their opinion that the site to the south will not be isolated and the streetscape will not be changed.

They provided the following responses to questions:

1. There are many other Semi-detached Houses in this neighbourhood, although they could not provide information regarding the types of housing located in close proximity to this site.
2. They did not undertake any community consultation but have never received any complaints from neighbouring property owners.

SUMMARY OF HEARING (CONTINUED):

3. The property was purchased as a four-plex and they questioned how other Semi-detached Houses with basement suites are approved.
4. The rear yard is fenced and each unit has a side yard that is shared by the tenants of both the main floor and basement dwelling units.
5. The basement windows were upgraded to comply with the building code requirements.

The Development Officer, Mr. Angeles, referred to his written submission and had nothing further to add.

DECISION:

that the appeal be ALLOWED and the development GRANTED with the following variances and conditions:

Variances:

- The deficiency of 282.82 square metres in the minimum required Site Area.
- The deficiency of 3.99 metres in the minimum required Site Width.
- The deficiency of 1.55 metres in the minimum required (east) Rear Setback.
- The deficiency of 2.20 metres in the minimum required (west) Front Setback.
- The deficiency of 0.46 metres in the minimum required (south) Side Setback.
- The deficiency of 4 on-site parking spaces in the minimum required number of parking spaces.
- The deficiency in the minimum required length of two on-site parking spaces.
- The requirements of Section 210.4(13), Section 823.3(3)(a), Section 823.3(5)(b) and (d), and Section 823.3(6)(b) are all waived.

Conditions:

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$4,084.00. The SSTC charge is quoted at year 2015 rate. Please contact Private Development, Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250 – 101 Street NW.

DECISION (CONTINUED):

2. Access from the site to 128 Avenue exists. Any modifications to the existing accesses require the review and approval of Transportation Services. See Enclosures I and II.

REASONS FOR DECISION:

The Board finds the following:

1. Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone.
2. The proposed conversion of a Semi-detached House to Apartment Housing complies with the General Purpose of the RA7 Low Rise Apartment Zone to provide a Zone for Low Rise Apartments.
3. The proposed development complies with the General Purpose of the Medium Scale Residential Infill Overlay to accommodate the development of medium-scale infill housing in Edmonton's mature residential neighbourhoods in a manner that ensures compatibility with adjacent properties while maintaining or enhancing a pedestrian-friendly streetscape.
4. Based on the information provided the building with the basement units has existed for several years. The building will not be structurally altered and the exterior appearance of the building will not change.
5. The Board finds that most of the variances required for the conversion due to the lot size which cannot be changed.
6. Section 823.3(2)(a) states all ground Storey Apartment Dwellings adjacent to a public roadway other than a Lane shall have a private exterior entrance that fronts onto the roadway. The Board finds that this requirement does not apply to the two basement Dwellings as they are not considered ground Storey Apartment Dwellings.
7. The Board finds that the impact of variances will be mitigated for the following reasons:
 - a) The existing development on the immediately adjacent lot to the south is of a similar scale and will not be isolated by the proposed change in Use.
 - b) The Site Area, Site Width, Site Depth and Setback requirements comply with the development requirements for Semi-detached Housing and the conversion will not change the siting or appearance of the building.
 - c) Based on the evidence provided two vehicles can be parked on the driveway and there is ample on street parking available on both sides of 128 Avenue.

REASONS FOR DECISION (CONTINUED):

- d) The front access has existed for many years and Transportation Services does not object to the development with the inclusion of conditions which have been imposed by the Board.
 - e) The Side Yards have been used as an outdoor Amenity Area by tenants of the main floor and basement Dwellings without any known complaint.
 - f) There were no letters of support or objection received and no one appeared in opposition to the proposed development.
8. 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.

Mr. R. Colistro, Chairman
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

Enclosure (I)(II)

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