

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: January 29, 2016
Project Number: 171838918-001
File Number: SDAB-D-16-023

Notice of Decision

This is an appeal dated November 16, 2015, from the decision of the Development Authority for permission to install one Minor Digital Off-premises Sign.

The permit application was refused because of a deficiency in the required separation distance from another digital sign, because of an excess in the maximum number of signs allowed on a site, and because of a deficiency in the minimum radial distance from other signs.

The subject site is located on Plan 0220792 Blk 70 Lot 89, at 14203 - 23 Avenue NW, and is zoned CSC Shopping Centre Zone.

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

The appeal was heard on January 14, 2016.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - a written submission from the Development Officer dated January 4, 2015;
 - an email dated November 3, 2015 to the Development officer from Transportation Services indicating that Transportation Services has no objection to the proposed development, subject to certain conditions and advisements;
 - letters of support for the proposed development from 19 surrounding business, provided by the Appellant;
 - an aerial image of the subject site provided by the Appellant;
 - a PowerPoint presentation provided by the Appellant; and
 - an email dated January 7, 2016 from a neighbouring property owner expressing opposition to the proposed development.

Position of the Appellant

1. The Board heard from Darcy Frunchak and Param Dhillon, representative of the Appellant, Icewerx Consulting Inc.
2. Mr. Frunchak and Mr. Dhillon showed a series of images in a PowerPoint presentation that depicted the proposed sign on the subject site. Their presentation also showed the subject neighbourhood and the location of other existing signs in the area. They noted that this is a commercially intense and vehicular oriented area that does not have sidewalks.
3. With respect to the proposed separation distance of 112 metres, they noted that this is greater than the length of a football field and is a separation distance that is not uncharacteristic of similar areas in Edmonton. In particular, they referred to pairs of signs in close proximity at 170 Street and 100 Avenue, at 170 Street and 99 Avenue, at 170 Street and Stony Plain Road and at 142 Street and Yellowhead Trail.
4. The existing sign from which the separation distance is measured faces the opposite direction and is not in the same field of view as the proposed sign. Further, Transportation Services does not object to the proposed sign.
5. The number of signs currently on the subject site is four, but this includes the entryway sign for Terwilliger Heights Square which is not an advertising sign. The entryway sign is for informational purposes and arguably should not be included in the tally of signs on the site.
6. There are nearby shopping centre sites that have more than four signs and presumably have been granted variances. The subject site should be allowed the same sort of variance.
7. With respect to the required 45 metre radial separation distance from the pylon sign, the actual distance is 44.18 metres and the deficiency of 0.82 metres is negligible.
8. The proposed sign has a post of only 12 inches in diameter and does not displace any landscaping. The sign is to be located on an area that is not a landscaped area or a walking area. In fact, pedestrians cannot walk along 23 Avenue at all. Rather than detract from the neighbourhood, the proposed sign supports the commercial nature of the neighbourhood.
9. The proposed sign will reduce the proliferation of temporary boulevard signs used by businesses in Terwilliger Heights Square by providing a preferable option for advertising. Therefore, the proposed sign will serve to decrease sign proliferation and reduce visual clutter.

10. They noted the other positive uses that can be made of digital signs by the City and police in the event of emergencies such as amber alerts.
11. They referenced 19 letters of support from neighbouring businesses and noted that they received no objection to the sign. Regarding the email in opposition that may have come from a nearby residential owner, they said that the proposed sign is not located within visual range of any residential area.
12. The Board noted that Off-premises Signs cannot advertise on-premises businesses and, therefore, would be unlikely to decrease the number of temporary boulevard signs. The Board asked whether the businesses in Terwilliger Heights Square that indicated support were aware of that. In response, Mr. Frunckak and Mr. Dhillon indicated that it was understood. They also noted that it is possible that after the sign is approved, they could make a future development permit application to change its use to include on-premises advertising.
13. The Board asked why there was no letter of support from TD Bank, which is the closest and most affected business. The answer was that the business is not managed at the local level and it was not practical to get a letter of support.

Position of the Development Authority

14. Sachin Ahuja of the City's Sustainable Development department appeared at the hearing to answer questions from the Board.
15. Mr. Ahuja agreed that the proposed sign would not have the effect of reducing temporary sign clutter because it is an off-premises sign that would not reduce the demand for temporary signs advertising on-premises goods and services.
16. Regarding the 45 metre radial separation distance required between Freestanding Signs by Section 59E.2(3)(e), he measured the distance to the face of the proposed sign as being 40.03 metres. The Appellants measured the distance to the support pillar, which is incorrect.
17. Mr. Ahuja noted that there are large trees in front of the proposed sign that will have to be removed if the sign is to be visible.
18. Although Section 59E.2(3)(e) is a regulation dealing with permitted signs, it still applies to the proposed discretionary sign because the existing sign within the 45 metre separation distance is a permitted sign.
19. Regarding the Appellant's argument that the existing shopping centre naming sign should not be included when counting the number of signs on the site because it is a smaller, lower sign, it is technically a Freestanding Sign and it must be included in the number of signs on the site and when determining separation distances.

20. There is no hardship particular to this site that would allow the Development Officer to grant the necessary variances to allow the proposed sign.

Rebuttal

21. In rebuttal, Mr. Frunckak and Mr. Dhillon stressed that it was important that the Board not disregard the 19 letters of support from surrounding business.
22. They also indicated that it is possible to place the sign and move only two trees. They noted that the trees are not there by nature but were put there in accordance with a landscaping plan. They will abide by the landscaping plan. No trees will be cut down, they will just be moved.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED

Reasons for Decision:

1. Minor Digital Off-premises Signs is a Discretionary Use in the CSC Shopping Centre Zone.
2. To grant a development permit for the proposed sign, three variances to the zoning bylaw are required. The Appellant took no issue at the hearing as to whether or not these variances were required, and simply argued that the variances should be granted.
3. The first variances requested was a variance to the 200 metre separation distance required between the proposed sign and the digital sign that is on the northeast corner of the intersection of Rabbit Hill Road and 23 Avenue. The Development Officer found that the relative size of these signs required that they that be separated by 200 metres. As the proposed separation distance is only 112 metres, the Appellant sought a variance of 88 metres to the regulation, arguing that the existing digital sign faced in the opposite direction to the proposed sign and was not in the same field of view.
4. The Appellant also argued that a variance should be granted to allow five signs on the site rather than four required by the regulation, stating that other nearby shopping centre developments had more than the allowable number of signs.
5. The Board disagrees with the Appellant and is of the view that the proposed sign would contribute to a proliferation of signs and digital signs in the area, which would contribute

to the visual clutter at this intersection. This is because the proposed sign would be both relatively close to a large digital sign on the site and would exceed allowable number of signs on the site. Further, nearby sites already have a significant number of signs, as demonstrated by the photographic evidence. The Board notes that the email received in opposition to the proposed sign expressed concerns about sign proliferation and visual clutter at this location. This type of visual clutter has an impact beyond the immediate area because it is located close to a major intersection used by thousands of people every day. Varying the regulations regarding the separation distance between digital signs and the maximum number of signs would have a significant impact on the amenities of the neighbourhood.

6. The Board is less concerned with the issue of the 45 metre radial separation distance from another Freestanding Sign on the same site. The existing sign is on the other side of a building on the subject site and would still be separated from the proposed sign by over 40 metres.
7. The Board agrees with the opinion of the Development Officer that the proposed sign would require the removal of several large trees. As the Appellant pointed out, those trees were planted at their present location in accordance with a required landscaping plan when the shopping centre was developed. These trees serve to beautify this corner of the development and soften the visual impact of the buildings on site. The Board is not convinced that the large, mature trees can be relocated, meaning they would have to be replaced with smaller, less mature trees. The Appellant did not present any alternative landscaping plan showing where new or relocated trees would be placed, leaving the Board to guess what location would look like when landscaping was complete. The Board is of the view that displacing the trees on site so that they would not obscure the view of the proposed sign would negatively affect the amenities of the area.
8. The Board notes that the Appellant obtained letters of support from 19 businesses on site. However, there is concern that this support was related to an impression that the proposed digital sign would give these businesses the opportunity to advertise on it rather than using temporary boulevard signs. However, the proposed sign is an Off-premises Sign, meaning that it could not be used for on-premises advertising. Accordingly, this digital sign would not decrease any of the clutter caused by those temporary boulevard signs.
9. For all of the above reasons, the Board is of the opinion that this discretionary use should not be allowed.

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application

for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

CC:

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: January 29, 2016
Project Number: 182792385-001
File Number: SDAB-D-16-024

Notice of Decision

This is an appeal dated December 17, 2015, from the decision of the Development Authority for permission to construct (1) Freestanding On-premises Sign.

The subject site is on Plan 3227TR Blk 6 Lot 41B, located at 3624 - 119 Street NW, and is zoned RA7 Low Rise Apartment Zone.

The development was approved by the Development Authority and subsequently appealing by a neighbouring property owner.

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

The appeal was heard on January 14, 2016.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - a written submission dated January 5, 2016 provided by the Development Officer.

Position of the Appellant

3. The Board heard from the Appellant, Michael Lewis who lives at 3632 119 Street and is potentially impacted by this sign development, which is located on the other side 119 Street to the west.
4. Mr. Lewis has been impacted an illuminated awning over a static sign on the subject site. That awning is not the subject of this appeal. The brightness of the awning has negatively impacted his quality of life by illuminating his home through his front window. When he

received notice about the development permit for the proposed sign, he was concerned that it would exacerbate the problems he was having with excessive light.

5. Having spoken to the Respondent about the subject sign, he is satisfied that it will be oriented so that it does not face his home and will not rotate. Therefore, he is satisfied that it will not unduly affect him. He is also in discussions with the Respondent about ways to mitigate the impact of the awning.

Position of the Development Authority

6. Paul Adams of the City's Sustainable Development Department appeared at the hearing to answer question from the Board
7. Mr. Adams said that this was a Class B permit requiring notice to affected neighbours because the use class is discretionary in the zone. It was not necessary to grant any variances.
8. He approved this sign because it was oriented so that the light would be projected up and down 119 Street and would not unduly affect the neighbouring residences across the street. Furthermore, there are trees that would mitigate light impact.
9. He confirmed that the subject sign will not display animated graphics or video nor will it rotate.

Position of the Respondent

10. The Board heard from Jonathan Bussey and Razvan Costin, representatives of Boardwalk, the Respondent.
11. They provided a rendering of the proposed sign and confirmed that it will not display animated graphics or video, nor will it rotate. They further confirmed that there will be a metal border around the sign that will mitigate illumination toward the sides.
12. They indicated their willingness to discuss with the Appellant his concerns about the potential nuisance effect of illumination from signs on their property.

DECISION

The appeal is DENIED and the decision of the Development Authority is CONFIRMED

Reasons for the Decision:

1. Freestanding On-premises Signs is a Discretionary Use in the RA7 Low Rise Apartment Zone.
2. The Board finds that the proposed sign conforms to all the development regulations set out in the zoning bylaw. The only issue before the Board is whether or not this discretionary use should be allowed.
3. The Appellant lives in a residential area directly east of the subject, across 119 Street which is a major four-lane arterial road. The subject sign has a total height of only 1.83 metres. The sign is not a digital sign nor does the sign mechanically rotate as was feared by the Appellant. The sign faces north and south as opposed to facing the residential area where the Appellant lives. The Board heard evidence and accepts that the metal edging around the sign copy ensures that light only diffuses in a north /south direction. Further, the Appellant indicated that, once he understood the nature of the proposed sign, he was satisfied that the proposed sign would not impact him.
4. For the forgoing reasons the Board finds that the proposed sign is not incompatible with the surrounding land uses and will either not affect the Appellant or, at most, will affect him minimally. Therefore the Board finds that the proposed development 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.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

CC:

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: January 29, 2016
Project Number: 182599096-002
File Number: SDAB-D-16-025

Notice of Decision

This is an appeal dated December 18, 2015, from the decision of the Development Authority for permission to construct exterior and interior alterations to an Accessory Building (commercial kitchen).

The subject site is on Plan 1014KS Blk 12 Lot 4, located at 7015 - 83 Street NW, and is zoned RF1 Single Detached Residential Zone.

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

The Appeal was heard on January 14, 2016.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - a written submission dated January 5, 2016 from the Development Officer; and
 - a written submission dated January 8, 2016 from the Appellant.

Position of the Appellant

3. The Board heard from Jonathan and Thea Avis, owners and operators of Meat Street Pies.
4. The Avises live at 7015 - 83rd Street NW, a house they own together with their daughter. Their residence includes a large garage (21' x 38'). They operate a Food Truck business through which they sell meat pies at various locations in Edmonton, including farmer's markets. Last year, they operated their business a few blocks away with a Minor Home Based Business development permit in place. They are now seeking permission to move the operation of their business to a portion of the garage at their new home.

5. They also want approval to partition off half of the garage (approximately 400 sq ft) to be used as a preparation area for meat fillings and pastry. These components would be transferred to the truck and finished on location. This will not require any external architectural changes to the building.
6. Any noises associated with food processing are minimal and cannot be heard outside the building. In answer to a question from the Board, they confirmed that the only noise is from a mixer similar to a domestic mixer and that it cannot be heard outside the garage.
7. The smells arising from the cooking of the meat filling is steam based with some aromatics. There is no deep frying or grilling required. In answer to a question from the Board, they suggested that the smell is no different than the smell of someone cooking a large pot of stew.
8. All storage of materials will be held inside the proposed space of 400 sq ft. The delivery of food and packaging will be done by their family car. No commercial trucks or vans will be making deliveries.
9. There are no employees of the business other than Mr. and Mrs. Avis.
10. There will be no traffic impact from the business. All foot traffic by family from the house to garage (12 feet away) is through the one-man door of the garage adjacent to the house. There will be no selling of products from the site. All sales will be offsite so there will be no impact of additional vehicle or pedestrian traffic.
11. They have personally visited each neighbour on the notification map and explained the use of the space. They also spoke with the Community League. They received almost universal support. The only exception is one house in the neighbourhood at which they called twice and found nobody home. In answer to a question from the Board, they confirmed that they have the support of the immediately adjacent and most affected neighbours.
12. At the request of the Board, they described a typical day in the operation of their business. They said that they would start by going to the grocery store in their car at around 6:30 or 7:00 in the morning. They would then bring supplies and ingredients purchased from the store into the garage through the man door. Then they would prepare pie shells and fillings in their garage. By mid-morning they would get their food truck from its off-premises storage space and bring it to their garage to be loaded. Then they would drive the truck to the designated place for the day's trade. They would cook and sell the pies at an off-premises location. The time of returning home varies, but can be as late as 8:30 pm. They unload the truck and then return it to the off-premises storage location.

13. Brandon Langille of the City's Sustainable Development Department appeared at the hearing to answer questions from the Board.
14. Mr. Langille's written submission provided the following reason for the refusal of the development permit:
 - This proposed use of the Accessory Building includes the processing of raw materials and the making, manufacturing or assembling of semi-finished or finished goods, products. The proposed use is deemed a General Industrial Use. General Industrial is not a listed use within the RF1 Zone. (Reference Sections 110.2 and 7.5.2 of the Zoning Bylaw). 2) The structure is a non-conforming building, which if altered, would unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring properties (Section 11.3.3).
15. Mr. Langille's written submission provides the following justifications for refusing the permit:
 - The interior and exterior alterations are proposed to a non-conforming building.
 - The proposed exhaust on the left side of the building will negatively impact the neighbouring properties.
 - The location of the garbage cans, exhaust, size and use of the Accessory structure, as well as the large concrete parking pad in the rear yard will make it visually clear that the proposed changes are for the purpose to operate a business. The intent of the bylaw regarding Major Home Based Businesses is that neighbouring properties will not be able to notice that a Home Based Business is in operation.
 - This proposed use of the Accessory Building includes the processing of raw materials and the making, manufacturing or assembling of semi-finished or finished goods and products. The proposed use is deemed a General Industrial Use. General Industrial is not a listed use with an RF1 Zone.
16. In answer to questions, Mr. Langille provided the following additional information and opinions:
 - The Home Based Business application is still under review.
 - There is an unpermitted exhaust stack existing on the roof of the garage.
 - The definition of General Industrial Use as provided by section 7.5(2) of the zoning bylaw includes the provision that it "does not include the preparation of food and beverages for direct sale to the public". This provision is meant to exclude restaurants from the definition of General Industrial Use. These words do not exclude the sort of business described by the Avises from the definition because the food is not sold directly to the public at the place of preparation.
 - The subject garage is unusually large. It is twice the size of neighbouring garages.
 - There is no operation size criteria related to the General Industrial Use class.
 - He had not seen the evidence of neighbourhood consultation prior to this hearing. He based his assessment of the impact the development would have on the information contained in the application.
 - It is not the general practice of the Development Authority to approve General Industrial Uses for limited time period. The reasoning is that potentially

significant money can be expended on renovations and equipment and it would be unfair to approve costly endeavors for a limited time.

- It is the general practice of the Development Authority to approve Major Home Based Businesses for periods of five years.

Rebuttal

17. In rebuttal, the Avides said that the existing exhaust stack is for a heater which was there when they bought the house. The exhaust vent they intend to install will not be obtrusive.

18. In answer to a question from the Board about the possibility of operating their business out of their basement, they suggested that it would have no different impact on the neighbourhood. They would produce no more or less noise or aromatics whether in the basement or the garage.

DECISION

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**.

The Board amends the scope of the application to “permit a Major Home Based Business (preparation of food for sale on an off-premises food truck) and to construct interior and exterior alterations to an Accessory Building (commercial kitchen)” and grants a development permit accordingly.

In approving this development, the Board allows the proposed alterations to the Accessory building as described in plans appended to the application.

The decision to **APPROVE** the development is subject to the following **CONDITIONS**:

1. Approval of the Major Home Based Business Development Permit expires five years from the date of this decision, on **January 29, 2021**.
2. No commercial vehicle associated with the business will be stored on-site. Commercial vehicles – specifically the food services truck – will be stored off-site and may only be parked on-site for a reasonable period of time necessary for loading and unloading of equipment and supplies.
3. All regulations related to Major Home Based Businesses, as prescribed by section 75 of Edmonton’s Zoning Bylaw, shall be complied with.

Reasons for the Decision:

1. For some years the Appellant and his wife (“the Avises”) had been operating a Minor Home Based Business at a location other than the subject site. The business involved the preparation of ingredients for meat pies which were later transferred to a food truck, and then baked on the food truck and sold at various locations across the city.
2. The Avises moved to a new residence, the subject site, where they currently reside. On November 12, 2015, they approached the Development Authority seeking the right to carry on their business at the new residence. The new residence includes a large four car garage. There exists a development permit for this garage although it is non-conforming.
3. The Avises advised the Development Authority that they wanted to use fifty percent of the garage as the kitchen for their business. This required extensive renovation and alterations to the interior of garage. They were directed by the Development Authority to split their application into two separate applications: one for the physical alteration to the garage and one for a Major Home Based Business development permit. They followed this advice.
4. The Development Authority decided to first process the application for the structural alterations to the garage which includes the repurposing of an existing exhaust chimney and extensive interior renovations. The Development Authority decided to put the application for the Home Based Business on hold until the application for the alterations had been disposed with.
5. The application contained the following description for the scope of the application: “to construct exterior and interior alterations to an Accessory Building (commercial kitchen)”. The Development Officer considered this application by itself without reference to the application for a Major Home Based Business. The Development Officer found that the application was in essence an application for a General Industrial Use. He then found that a General Industrial Use is not a listed use in the RF1 zone. The application was refused and the Avises started this appeal before the Board.
6. The Board has reviewed the application including the attached drawings. Based on the evidence provided by the Appellant in their application, combined with the evidence provided at this hearing, the Board is of the view that that the application for physical alterations to the garage and the application for a Major Home Based Business cannot be considered in isolation. They must be considered together because the manner in which the physical alterations will be used determines which Use class definition best applies. Accordingly, the Board is amending the scope of the application before it to include the Major Home Based Business.
7. The Board cannot agree with the Development Officer that the proposed Use is best described as General Industrial Use. The Development Officer relied on the definition of General Industrial Use in Section 7.5(2) of the Zoning Bylaw, which says that General Industrial Use “does not include the preparation of food and beverages for direct sale to the public”. The Development Officer argued that this provision is meant to exclude restaurants and that it does not exclude the sort of business described by the Appellant

because the food is not sold directly to the public at the place of preparation. The Board does not agree with the Development Officer's interpretation. The definition of General Industrial Use does not have any qualifier requiring the direct sale to occur on site. The evidence from the Appellant is that they sell their pies directly to the consumer. They do not sell to other retailers, wholesalers or distributors of any kind. As a result this type of sale could only be described as a direct sale. By way of contrast consider the definition of Specialty Food Services, Section 7.4(47), which specifically deals with the location of the consumption of the food being on or off of the premises. As such, the Board finds that the proposed use does not fit within the definition of a General Industrial Use.

8. The Board finds that the use class that best fits the application is Major Home Based Business. Section 7.3(7) of the zoning bylaw defines A Major Home Based Business as follows:

“Major Home Based Business means development consisting of the use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses such businesses 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. The Dwelling may be used as a workplace by a non-resident. This Use Class includes Bed and Breakfast Operations but does not include General Retail Sales”.

9. The proposed development meets the definition of Major Home Based Business for the following reasons:

- a. The definition explicitly allows the use of an accessory building for the business as well as allowing one more than one business visits per day, which will be the case here.
- b. The business use must be secondary and not change the residential character of the building. The Board finds that this is also met. The building remains a garage; only a portion of the garage is being used as a kitchen meaning that it is still secondary to the principal use. There will remain two parking stalls in the garage. Further it will not change the residential character of the garage as the exterior renovations sought are minor and not noticeable to the neighbours.
- c. The business must be used by a resident of the dwelling and the Applicants are both residents of the dwelling.
- d. There is an exclusion of general retail sales from Major Home Based Businesses. Section 7.4(22) defines General Retail Sales as follows:

“General Retail Stores means development used for the retail or consignment sale of new goods or merchandise within an enclosed building, not including the sale of gasoline, heavy agricultural and

industrial equipment, alcoholic beverages, or goods sold wholesale. Accessory Uses may include the assembly or repair of products sold on Site, or minor public services such as postal services or pharmacies. This Use Class does not include Aircraft Sales/Rentals, Automotive and Minor Recreation Vehicle Sales/Rentals, Flea Market, Gas Bars, Greenhouses, Plant Nurseries and Market Gardens, Pawn Stores, Major Alcohol Sales, Minor Alcohol Sales, Major Service Stations, Minor Service Stations, Secondhand Stores, and Warehouse Sales”.

The relevant part of this definition is that the sales must take part within an enclosed building. In the case of the proposed business, the sales are being conducted off site and not within an enclosed building.

10. Accordingly the Board finds that what is applied for is in fact a Major Home Based Business which is a discretionary use. The Board then has to decide whether this discretionary should be allow. The Board finds that it should be allowed.
11. The Board has reviewed the development regulations for Major Home Based Businesses as set out in Section 75 of the Zoning Bylaw. The Board has reviewed all the evidence before it and is satisfied that the proposed business meets all the requirements of Section 75. To further ensure such compliance, and because the Development Officer did not evaluate this application with respect to compliance with Section 75, the Board will place a condition that all the requirements of Section 75 must be complied with.
12. While this is a discretionary use, the Board finds it is not incompatible with the surrounding existing land uses. The physical structures on the site and the alterations to the structures will not be noticeable from the exterior. The most noticeable aspects would be the arrival of the food truck to load and unload pies and equipment. Given that this loading and unloading does not occur on the street, but in the back yard, its impact will not be significant or material to surrounding landowners. The Board also notes that the development has the support of almost everyone in the 60 metre notification radius as well as the Community League. There was no indication of opposition before the Board and nobody appeared at the hearing to oppose the development.
13. Although the issuance of a development permit for a discretionary use is a Class B permit that would typically result in notices being sent to neighbouring property owners and an opportunity to appeal the issuance of the development permit, the Board is satisfied that the community consultation carried out by the Appellants effectively put affected property owners on notice that the Appellants were seeking permission for a Major Home Based Business and provided sufficient information about what the business operation entailed. Based on this information, the Appellants received the support of virtually everyone within the notification zone as well as from the Community League. No one indicated that they were opposed to the Major Home Based Business. The Board is satisfied that effective notice of the Appellant’s intentions was provided to neighbouring property owners.

14. The Board recognizes that the subject Accessory Building (the garage) is a non-conforming building. Section 11.3(3) of the Zoning Bylaw provides that “the Development Officer may approve, with or without conditions as a Class B Development, an enlargement, alteration or addition to a legal non-conforming building if the non-conforming building complies with the uses prescribed for that land in this Bylaw and the proposed development would not, in his opinion: (a) unduly interfere with the amenities of the neighbourhood; or (b) materially interfere with or affect the use, enjoyment or value of neighbouring properties.”
15. The Board finds that the proposed alterations do comply with the uses prescribed for the land and that the alterations will not unduly interfere with the amenities of the neighbourhood, nor will they materially interfere with or affect the use, enjoyment or value of neighbouring properties.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

CC:

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: January 29, 2016
Project Number: 176013858-001
File Number: SDAB-D-16-026

Notice of Decision

This appeal dated December 1, 2015, from the decision of the Development Authority for permission to construct a Single Detached House with a rear attached Garage, a front veranda, fireplace, Basement development (NOT to be used as an additional Dwelling).

The subject site is on Plan 2938HW Blk 10 Lot 57, located at 11682 - 72 Avenue NW, and is zoned RF1 Single Detached Residential Zone.

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

The appeal was heard on January 14, 2016.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - a written submission dated January 11, 2016 from the Development Officer; and
 - a submission containing photographs received from the Appellant at the start of the hearing.

Position of the Appellant

3. The Board heard from the Appellant, Gordon McAuley.
4. Mr. McAuley reviewed elevation drawings and plot plans for the proposed development. He noted that the subject site is quite large, being 68 feet by 140 feet. Because the proposed house will only be 48 feet wide, there will be ample side yards. Further, the development will only take up 30 percent of the site, which is well within the permitted maximum site coverage.

5. The lots in this neighbourhood are quite desirable, selling at between \$600,000 and \$700,000. Typically the lots are sold for the value of the bare land and the older houses are demolished. Generally, if a person buys a plot for \$600,000, they will spend around \$1,200,000 on the construction of a new house. When a person spends that much money on a new house there are certain features and building configurations that they expect and demand and an attached garage is one highly demanded feature.
6. Mr. McAuley showed pictures of other houses in the neighbourhood that have attached garages, some having rear attached garages. Many of the houses are newer high end houses with rear attached garages and other apparently non-conforming configurations.
7. With respect to the rationale for wanting an attached garage, Mr. McAuley noted that Edmonton has extreme weather conditions and an attached garage makes sense. The owners of the subject property also have concerns about safety and security. An attached garage would allow them to safely enter and exit their home without fear of criminal attack. They also have aging parents who often visit for extended stays. An attached garage is helpful for people who have mobility issues.
8. Mr. McCauley noted that a community consultation was done. The property owners canvassed the neighborhood twice with all the relevant documents and plans. They received 11 or 12 approvals from affected neighbours. Nobody they spoke with expressed a problem with the proposed development. More importantly, they spoke with the neighbours on either side of the proposed development and neither of them had concerns. Mr. McAuley also indicated that he spoke to a representative of the Community League and was told that the Community League is in support of these sort of developments.
9. In answer to a question from the Board, Mr. McAuley indicated that there are large mature trees on the more monolithic side of the proposed development that shield it from the neighbour's view.

Position of the Development Authority

10. The Board heard from George Robinson of the City's Sustainable Development department. Mr. Robinson noted that, with respect to the neighbourhood consultation, 10 responses had been received from 23 affected neighbours. He then provided the following information and opinion in answer to questions from the Board:
 - His map showing the locations of neighbouring houses with rear attached garages was prepared by consulting pictometry software that uses satellite imagery. Some of the houses identified on his map are older non-conforming homes, but there are other the newly constructed homes, particularly on Saskatchewan Drive. These houses may have been approved following appeals to the SDAB.
 - The City's standard procedure is to not encourage rear attached garages.

- The rationale for the prohibition against rear attached garages are concerns about building massing, loss of amenity area, and the general intention of Mature Neighbourhood Overlay to preserve the character of the neighbourhood.
- There is no concern about insufficient amenity area on the subject site.
- The articulation and design detail of the proposed building is good on one side. On the other side, there is a large continuous wall that has a massing effect.

Rebuttal

11. In rebuttal, Mr. McAuley suggested that the objective of preserving the character of the neighbourhood is misplaced in this neighbourhood. These are large and expensive lots. Many of the existing houses are small and 60 or more years old. It is unreasonable to assume that any new development on this site will have the same character as a small 60 year old house.
12. With respect to the alleged massing effect on the side the Development Officer was concerned about, Mr. McAuley reiterated that there are dense trees that obscure the view of the house on that side.

DECISION

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. This Development Permit authorizes the development of a Single detached House with a rear attached Garage, a front veranda, fireplace, Basement development (NOT to be used as an additional Dwelling).

In granting the development, the following variance is allowed: A deficiency of 9.57 metres in the minimum rear setback, as per Section 815.3(5).

The following requirement is waived: "Rear attached Garages shall not be allowed, except on Corner Sites where the Dwelling faces the flanking public roadway", as per Section 814.3(18).

The Development is allowed subject to the following **CONDITIONS**:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. The height of the principal building shall not exceed 8.6 m as per the height definition in Sections 6.1(49) and 52.1 of the Edmonton Zoning Bylaw 12800.
3. The proposed Basement development shall **NOT** be used as an additional Dwelling. A Secondary Suite shall require a new development permit application.

4. 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(4)(b).
5. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.
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 Zoning Bylaw 12800.
7. Regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists. Existing front vehicular access to 72 Avenue NW shall be removed prior to the issuance of an Occupancy Certificate for the development (Reference Section 814.3(10)).
8. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction (Reference Section 53(1)). PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Curb Crossing Permit application fee of \$50.00 to fill in the curb crossing to 72 Avenue NW.
9. 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 m. 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 or future additions. (Reference Section 47)

Reasons for the Decision

1. Single Detached Housing in a Permitted Use in the RF1 Single Detached Zone.
2. Both variances required for the proposed development are related to the fact that a rear attached garage is proposed. Both variances are granted for the following reasons.
3. The garage portion of the principle structure is single storey. The west facade is heavily articulated and the east elevation, while not as articulated, contains a step down from the principle dwelling. These design choices mitigate the massing effect which was the principle concern of the Development Officer.
4. The proposed development has wide community support within the notification radius. In particular it has the support of both adjacent property owners as well as the owner of the property across the back lane. There was no expressed opposition.

5. There is currently landscaping which will mask the structure from the property to the east.
6. The lot is large and the proposed development will occupy only 30 percent of the site. This allows for maintenance of a significant amenity area.
7. The neighbourhood is divided in character. While significant portions do not have attached garages, and retain the traditional rear detached garage, there are a significant number of houses, particularly newer ones, that do have attached rear garages.
8. Based on the foregoing reasons, the Board is convinced that the proposed development is not incompatible with the surrounding land uses and it will not unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application

for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

CC: