



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 9, 2018
Project Number: 267831349-001
File Number: SDAB-D-18-012

Notice of Decision

[1] On January 25, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 27, 2017**. The appeal concerned the decision of the Development Authority, issued on December 22, 2017, to refuse the following development:

To construct an Accessory building (detached Garage, 7.62 metres by 7.01 metres).

[2] The subject property is on Plan 2064S Blk 2 Lot 7, located at 11422 - 77 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- A Letter of opposition from the McKernan Community League;
- One on-line response in opposition to the proposed development; and
- The Appellant’s written submission.

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

- Exhibit A – Documentation from the Appellant, including signatures from the neighbourhood; and
- Exhibit B – Photographs from the Appellant of existing Garages in the neighbourhood.

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.

Summary of Hearing

i) Position of the Appellant, Mr. H. Lotzgeselle, representing Rosecrest Homes Ltd. and the property owner, Dr. B. Fairbanks:

- [8] A height variance is required to construct a steeper roof pitch that will match the architectural style of the house. In their opinion, constructing a roofline that does not match the house roofline will not be aesthetically pleasing.
- [9] The proposed triple car garage with a drive through provision will provide adequate parking for the residents of both the house and the basement suite. Dr. Fairbanks has eight children and tenants that live in the principal dwelling and the basement suite.
- [10] The proposed garage is narrow in width and will only accommodate three small vehicles. In order to provide some storage and interior circulation, the depth of the garage will be extended, which has led to the site coverage variance.
- [11] Dr. Fairbanks discussed the proposed development with his neighbours and received numerous signatures of support, marked *Exhibit A*.
- [12] The Presiding Officer noted that the information regarding the variances outlined in the letter circulated to the neighbours was incorrect. Neighbours were informed that the height to the midpoint exceeded the maximum allowable height by 0.4 metres when it is actually 0.9 metres and that the highest point of the roof is 0.6 metres when it is actually 1.2 metres. The Presiding Officer further noted that the two site coverage variances were not outlined in the letter.
- [13] Dr. Fairbanks advised the Board that the letter was composed using information regarding the variances that was provided to him by his builder. He was not aware that a variance was required in the site coverage requirements.
- [14] Mr. Lotzgeselle advised that he did not have a copy of the e-mail that he received from the Development Officer that contained information about the variances. It was possible that he misread the refusal. Dr. Fairbanks prepared the letter based on the information that he provided to him.

- [15] Photographs of other over height garages in the neighbourhood were submitted as *Exhibit B*. Two of the garages are located on the same lane. Exact measurements could not be established; however, they appear to be visually as high, if not higher than the proposed garage. It is quite possible that these garages were built prior to the implementation of the Mature Neighbourhood Overlay.
- [16] In their opinion, the excess of one percent in the site coverage requirement is minimal. Reducing the depth of the garage to comply with the site coverage requirement will not provide any storage space on the main floor and will only accommodate ladder access to the proposed attic space.
- [17] Mr. Lotzgeselle expressed the opinion that, based on his construction experience over the past 35 years, the excess in height with the proposed dormers will not create undue massing. The proposed dormers will provide light to the attic space as well as adequate standing room. In his opinion, constructing the garage with a reduced slope would not be architecturally pleasing.
- [18] The proposed plans were not reviewed with the neighbours during the consultation process. However, one neighbour inquired about the size of the garage and another neighbour asked how far the garage would be located from the alley.
- [19] Several Development Officers advised them that they could approve minor variances, excluding height regulations.
- [20] In Dr. Fairbanks' opinion, the proposed development will be an asset to the neighbourhood and will contribute to City Council's desire to develop higher density housing close to the LRT. Some of his neighbours have been contacted by the City regarding the possibility of rezoning their properties to accommodate higher density housing close to the LRT.
- [21] Dr. Fairbanks and Mr. Lotzgeselle provided the following information in response to questions from the Board:
- a) When the application was originally made, the regulations required the provision of four on-site parking spaces for the principal dwelling and the secondary suite. Four parking spaces will also help meet the needs of this large family.
 - b) All the closest neighbours have provided support for the proposed development and are contemplating similar developments in the future.
 - c) The principal dwelling does not exceed the maximum allowable height requirements.
 - d) They acknowledged the non-support of the McKernan Community League. However, the proposed design with the required variances is a matter of function and purpose.

- e) A garage located on the same alley received a height variance recently and an abutting neighbour is planning to build a similar garage.
- f) If the garage was reduced to two parking spaces, a height variance would still be required in order to match the roof pitch of the house.
- g) They could not confirm whether or not any of the over height garages that were referenced include living space.
- h) It was always their intent to construct the garage after the house was finished in order to provide construction space on the lot. They were aware that a height variance would be required for the garage.

ii) Position of an Affected Property Owner, Mr. R. Heath:

- [22] Mr. Heath questioned why the house and the garage were not designed at the same time. However, he does not object to the proposed garage if none of the closer neighbours object.
- [23] In response to a question, Mr. Heath indicated that the proposed garage would likely only be visible from the front street if you look between the houses.

iii) Position of the Development Authority, Mr. B. Liang

- [24] Mr. Liang provided a written submission and did not attend the hearing.

iv) Rebuttal of the Appellant, Mr. H. Lotzgeselle and Dr. B. Fairbanks

- [25] In Mr. Lotzgeselle's opinion, the view of the garage from the front street will be very limited because the houses are separated by only eight feet and there are existing fences and mature vegetation that provides screening.

Decision

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

Reasons for Decision

- [27] Single Detached Housing is a Permitted Use in the (RF1) Single Detached Residential Zone. The proposed detached Garage is Accessory to a Permitted Use in the Zone and is, therefore, a Permitted Use (Section 50.1(2) *Edmonton Zoning Bylaw*).

[28] The proposed Accessory Building (detached Garage) requires a total of four variances.

- a. Section 50.3(3)(a) states “an Accessory building or structure shall not exceed 4.3 metres in Height, [...]”.

The Development Officer determined that the Height to the midpoint of the roof is 5.2 metres which exceeds the maximum allowable Height by 0.9 metres.

- b. Section 50.2(c) states that “where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.5 metres above the maximum permitted building Height of the Zone or overlay.”

The Development Officer determined that the maximum allowable Height to the ridge line is 5.8 metres. The Height of the proposed Accessory Building when measured from Grade to ridge line is 7.0 metres, exceeding the maximum allowed by 1.2 metres.

The Accessory Building was designed to include a roof pitch that matches the design of the Single Detached House and to provide additional storage space above the Garage which resulted in the variances required for the maximum allowable Height to roof midpoint and ridge line.

- c. Section 50.3(4) states “the Site Coverage of Accessory buildings or structures shall not exceed 12 percent, unless a different standard is prescribed within the regulations contained within the relevant Zone.”

The proposed Accessory Building is 53.4 square metres, 13 percent of the Site Area and exceeds the maximum allowable by 1 percent.

- d. Section 110.4(7)(a) states that “the maximum allowable total Site Coverage shall be 40 percent for Single Detached Housing with a Site greater than 300 square metres”.

The proposed Accessory building and Single Detached House have a total Site Coverage of 41 percent, which exceeds the maximum allowable by 1 percent.

The length of the Garage was extended to accommodate an internal stairway leading to the storage space on the second level. This is what led to the Site Coverage issues.

[29] Neighbourhood consultation is not required by the *Edmonton Zoning Bylaw* for the required variances. However, the Appellant did undertake neighbourhood consultation. Unfortunately, the information provided to the neighbours about the variances was incorrect.

- [30] The letter provided to the neighbours indicated that the excess in Height to the midpoint of the roof was 0.4 metres rather than 0.9 metres. In addition, the letter indicated that the excess in Height to the ridge line of the roof was 0.6 metres rather than 1.2 metres. The Site Coverage variances of one percent were not mentioned.
- [31] In the opinion of the Board, the Site Coverage variances are not significant and the failure to include them in the information provided to the neighbours is of little importance. However, the misinformation about the Height variances is significant to the point that the Board cannot accept the 13 letters of support in *Exhibit A* as an indication that the neighbours truly understand and appreciate the nature of the proposed development, particularly given that the neighbours were not shown the plans of the proposed development.
- [32] The proposed design includes large dormers on either side of the Garage roof. It is the view of the Board that the combination of the proposed dormers and the excess in Height will result in a massing affect that will have a significant impact on the use and enjoyment of the abutting neighbouring parcels of land.
- [33] The Board notes the opposition of the McKernan Community League.
- [34] The Appellant provided photographic evidence of Accessory buildings that have been developed in this neighbourhood that, in his opinion, are a similar Height to the proposed development. However, the Board found this evidence to be inconclusive because accurate measurements could not be provided to determine the actual Height of these structures.
- [35] If the Appellant had provided evidence that the affected neighbours, particularly the abutting neighbours, had received accurate information regarding the required variances and did not oppose the proposed development, the Board may have reached a different decision. However, based on the evidence provided and the reasons above, the Board is of the opinion that the proposed development will materially interfere with and affect the use and enjoyment of neighbouring parcels of land.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. P. Jones, Mr. R. Hachigian, Mr. R. Handa, Ms. E. Solez

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.
2. When a decision on a Development Permit application has been rendered by Development & Zoning Services, Urban Form & Corporate Strategic Development, the enforcement of that decision is carried out by Development and Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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Date: February 9, 2018
Project Number: 267795896-001
File Number: SDAB-D-18-013

Notice of Decision

- [1] On January 25, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 2, 2018**. The appeal concerned the decision of the Development Authority, issued on December 6, 2017, to approve the following development:

To operate a Major Home Based Business (Teaching Mandarin language - Yan Yan Mandarin Training).

- [2] The subject property is on Plan 7521271 Blk 83 Lot 25, located at 11257 - 34A Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions including a photograph; and
 - One on-line response in opposition to the proposed development.

Preliminary Matters

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

[7] The hearing was scheduled to start at 10:30 a.m. but did not commence until 11:00 a.m. The Presiding Officer explained to the Appellant, Ms. F. Halbert that an attempt was made, without success, to contact the Respondent, Ms. Y. Wang because of their non-appearance at the hearing. The Presiding Officer explained that the Board has made a motion to proceed with the hearing with the Appellant and then determine if the appeal can be decided in the absence of the Respondent. If it is determined that a decision cannot be made without receiving evidence from the Respondent, the hearing may be postponed to a future date.

Summary of Hearing

i) Position of the Appellant, Ms. F. Halbert:

[8] Ms. Halbert is not opposed to the operation of this business. However, as a parent and an adjacent neighbour she is concerned about increased traffic associated with the business.

[9] This end of the block is highly used, played on by children under the age of 10 and safety is a significant concern. She prefers a condition be added to the development permit that parents driving to the site must be informed that this end of the block is a drop off zone and vehicle pick-up/drop-off activity should be done on the subject site.

[10] Ms. Wang advised her that she hopes that the business will grow and the number of students will increase on weekends. It is her preference that the business is restricted to a maximum of three students per day.

[11] In her opinion, a five year permit is too long if problems arise from the operation of the business.

[12] Ms. Halbert provided the following information in response to questions from the Board:

- a) She reviewed the conditions imposed on the permit and the regulations for a Major Home Based Business but questioned how it was determined that a business generated pedestrian or vehicular traffic, or parking in excess of that which is characteristic of the Zone in which it is located.
- b) She indicated that the conditions imposed alleviate many of her concerns and understood that non-compliance with the conditions could be addressed through Bylaw Enforcement. However, imposing an additional condition regarding the maximum number of visits allowed per day would address her largest concern.

ii) Position of the Development Authority, Mr. C. Kennedy

[13] Mr. Kennedy provided a written submission and did not attend the hearing.

iii) *Position of the Respondent, Ms. Y. Wang.*

[14] Ms. Wang did not attend the hearing.

[15] The Board elected to make a decision in the absence of the Appellant.

Decision

[16] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following additional conditions:

1. All pickup/drop off spaces and business related parking shall be accommodated on site.
2. The number of customer vehicle visits shall not exceed five per day. A customer vehicle visit is considered to be one drop off and one pickup.

The development is subject to the following **AMENDED CONDITION** of the Development Authority:

1. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on **February 9, 2023.**

The development is subject to the following **CONDITIONS** imposed by the Development Authority:

1. There shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling. (Section 75.1);
2. There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings. (Section 75.2);
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located. (Section 75.3);
4. The number of non-resident employees or business partners working on-site shall not exceed two at any one time. (Section 75.4);
5. There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings. (Section 75.5);

6. The Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings. (Section 75.6);
7. The Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area. (Section 75.9);
8. A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garden Suite and an associated principal Dwelling. (Section 75.10);
9. The Major Home Based Business shall not become a Nuisance. Nuisance means anything that is obnoxious, offensive or interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses. This could include that which creates or is liable to create a nuisance through emission of noise, smoke, dust, odour, heat, light, fumes, fire or explosive hazard; results in the unsightly or unsafe storage of goods, salvage, junk, waste or other materials; poses a hazard to health and safety; or adversely affects the amenities of the neighbourhood or interferes with the rights of neighbours to the normal enjoyment of any land or building. (Section 6.1(73));
10. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
11. The Development Officer may cancel a Development Permit following its approval if: any person undertakes development, or causes or allows any development to take place on a Site contrary to the Development Permit; the application for the Development Permit contained a material misrepresentation; material facts were not disclosed during the application for the Development Permit; the Development Permit was issued as a result of a material error; or the landowner requests, by way of written notice to the Development Officer, the cancellation of the Development Permit. (Section 17.2)

Reasons for Decision

- [17] A Major Home Based Business is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [18] The proposed Major Home Based Business complies with all of the development regulations of the *Edmonton Zoning Bylaw*.
- [19] Based on the evidence provided, the Appellant was not opposed to the proposed Major Home Based Business in and of itself. The major concern was the impact that the

business would have on the neighbourhood in terms of increased traffic, parking and related safety concerns because street parking is already very limited.

- [20] Accordingly, the Board has imposed two conditions to limit the number of visits per day and require all pickup/drop off spaces to be accommodated on site. Limiting the number of customer vehicle visits to no more than five per day will address the Appellant's concern that the business will grow beyond a level that is acceptable in the neighbourhood. Requiring the pickup/drop off spaces to be accommodated on site will address the concerns about limited street parking.
- [21] The conditions that were imposed on the approved development permit by the Development Officer address the concerns raised by some of the affected neighbours related to additional noise and the type of signage that would be allowed on the premises.
- [22] The Board is of the view that the proposed development with the conditions imposed by the Development Officer and the two additional conditions imposed by the Board, is reasonably compatible with surrounding development and will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. P. Jones, Mr. R. Hachigian, Mr. R. Handa, Ms. E. Solez

Important Information for the Applicant/Appellant

1. This is not a Business Licence. A Business Licence must be obtained separately from Development & Zoning Services, Urban Form & Corporate Strategic Development, 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 Development & Zoning Services, Urban Form & Corporate Strategic Development, 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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SDAB-D-18-014

Application No. 265542821-001

An appeal to change the Use from Household Repair Services to Religious Assembly (Minor) and to construct interior alterations was **TABLED** to February 14, 2018