



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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

Date: July 28, 2016
Project Number: 221454622-001
File Number: SDAB-D-16-162

Notice of Decision

- [1] On July 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 12, 2016. The appeal concerned the decision of the Development Authority, issued on May 27, 2016, to approve the following development:

Develop a Secondary Suite in the Basement and to construct exterior alterations (install a side entrance on the main floor) to an existing Single Detached House

- [2] The subject property is on Plan 0425561 Blk 86 Lot 18, located at 11808 - 169 Avenue NW, within the RSL Residential Small Lot Zone. The Canossa Neighbourhood Structure Plan and the Castle Downs Area Structure Plan apply to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A letter from the Appellant Authorizing a representative to appear on his behalf;
 - Correspondence from the Appellant's representative asking the Board to proceed in her absence on the basis of the Appellant's written submissions;
 - The Appellant's written submissions;
 - The Approved Development Permit with attachments;
 - The Development Officer's written submissions;
 - The Respondent's written submissions;
 - The Canossa Neighbourhood Structure Plan; and
 - The Castle Downs Area Structure Plan.

Preliminary Matter

- [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*, R.S.A 2000, c. M-26

Summary of Hearing

i) *Position of the Appellant, Mr. A. Cotton*

- [7] The Appellant was not in attendance but, through written correspondence, asked the Board to proceed based on the arguments contained in his written submissions.

ii) *Position of the Development Officers, Ms. A. Fang and Ms. K. Mark*

- [8] The Development Officers addressed the concerns contained in the Appellant's written submissions.

- [9] The Appellant's contention that there are not off-street parking spots to accommodate the proposed development is wrong; there is sufficient parking on Site. The application was not reviewed with on-street parking in mind because it is not contemplated by the *Zoning Bylaw*. The off-street parking proposed in the Respondents' application complies with the parking requirements associated with Secondary Suites in the *Zoning Bylaw*.

- [10] With respect to the Site area variance that was allowed, the RSL Zone was intended to allow for the development of Secondary Suites. However, this particular Site has a unique hardship in terms of its size. Many of the lots in the neighbourhood exceed the minimum Site area of 360 square metres required by the *Zoning Bylaw*, but the subject Site, at a Site area of 343 square metres, is 4.68% below that minimum requirement. The variance was granted because the lot is slightly smaller than 360 square metres in an area that is zoned for Secondary Suites, and there is nothing the Respondents can do to change the size of the subject Site. The proposed development meets all other *Zoning Bylaw* regulations. So long as the property owner and tenants are satisfied with the smaller area, the proposed development is not going to have any negative impact on the surrounding neighbourhood.

- [11] The side entrance was also a point of contention for the Appellant. However, that entrance could legally exist regardless of any Secondary Suite development. It could be used for access to a finished basement.

- [12] The stairs attached to the side entrance are not considered part of the structure, and they meet the required Setback in any event.

- [13] Finally, the Development Officers confirmed that this was not a rezoning application, despite the Appellant having indicated as much in his written submissions.

iii) Position of the Respondent, Mr. Y Noel and Ms. A. Hurtarte

- [14] The Respondents stated that four parking spaces are available on Site. Two of them are in the Garage, and the other two are on the Driveway. Sometimes they park on the street because they are still in the process of moving into their home and have boxes taking up space in their Garage. In any event, they comply with the requirements of Section 54.2 Schedule 1 regarding parking spaces, and the Development Authority has confirmed that the proposed development has sufficient parking.
- [15] The side entrance was approved by the City and complies with the Side Setback. They are not encroaching on the neighbor's property in any way, and their own property will not appear any different as a result of that door.
- [16] They are not building an in-law suite, nor are they seeking to rezone the property. They are building a Secondary Suite in accordance with the *Zoning Bylaw*.

iv) Clarification by the Development Officers

- [17] With respect to the side entrance, the Development Officers explained that it is not their role to look at whether or not building code stair-size requirements are met. The *Zoning Bylaw* in general does not contemplate stairs. The Development Authority takes the view that, if it is going to allow a development to be built to a certain size, it would be unreasonable not to allow the stairs needed to access it. In any event, because the steps below the side entrance represent such a low structure, it is not something they are concerned about. The proposed landing, as it appears in the stamped, approved plans, is less than 0.6 metres in Height and complies with the *Zoning Bylaw*.
- [18] The proposed landing and steps oriented toward the Front Lot Line included in the original, stamped and approved permit are compliant with the development regulations. The Development Officers view the structure as a tiered deck as opposed to a stair.

v) Clarification by the Respondents

- [19] The Respondents confirmed that they would like to proceed with the development as it was approved by the Development Authority in the stamped and approved plans. They would like a tiered deck oriented towards the front of the Site within the property line.

Decision

[20] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority and is subject to the conditions stated by the Development Authority in the Approved Development Permit.

[21] In granting the development, the following variance to the *Zoning Bylaw* is allowed:

- i) The minimum Site area requirement per Section 86.1 is varied by 17 square metres to reduce the required Site area from 360 square metres to 343 square metres.

Reasons for Decision

[22] The proposed development, a Secondary Suite, is a Permitted Use in the RSL Small Lot Residential Zone.

[23] The Appellants' written submission outlined several concerns. First, with respect to parking, despite the fact that the proposed development complies with all off-street parking requirements, the Appellants are concerned that the Applicants and their tenants will park on the street, adding to congestion in the neighbourhood. Secondly, the Appellants contend that this RSL neighbourhood was not designed to accommodate the development of basement suites. Third, the tenants who will be living in the proposed suite may not, in fact, be the Applicants' in-laws. Fourth, they contend that the proposed development's side entrance will interfere with the look and character of the neighbourhood.

[24] The Board is not persuaded by these arguments for the following reasons:

- i) This development fully complies with off-street parking requirements. Three off-street parking spaces are required and four are provided: two within the attached Garage and two on the front Driveway. Therefore, the proposed development actually exceeds the development regulations in the *Zoning Bylaw* pertaining to off-street parking requirements.
- ii) Secondary Suites are a Permitted Use in the RSL Zone per Section 115.1. They are also consistent with the stated purpose of the RSL Zone contained in Section 115.2, which explicitly mentions the opportunity for Secondary Suites. This is a clear indication by Council that Secondary Suites are an appropriate Use in this neighbourhood.
- iii) The proposed development is a Secondary Suite. There is no such Use class as "in-law suite." The *Zoning Bylaw* regulates Use not users. Therefore, the identity of the occupant of the Secondary Suite is not a relevant consideration for the Board.

- iv) The proposed entrance to the Secondary Suite is located at the side of the existing dwelling. No other exterior alterations are proposed to the front of the dwelling. This door is minimally visible from the street. Further, this door, including its access, could be built regardless of the existence of a Secondary Suite.
 - v) The Board accepts the submissions of the Development Officer that the proposed side entrance and elevated platform access are compliant with the *Zoning Bylaw*, and even if a variance to Side Setback were to be required, it would have no material adverse impact on the surrounding properties.
- [25] The neighbor immediately adjacent to the east provided a letter in support of the proposed development. No one else objected through correspondence or by appearing at the hearing.
- [26] With the exception of minimum Site area, the proposed development is fully compliant with development regulations. In particular, it is fully compliant with off-street parking, setback, and private amenity space requirements. The Board notes that these types of development regulations may work in concert with Site area to indicate an over development of a particular Site or an aggregate negative impact. Here, the fact that the proposed development is fully compliant in those other respects supports the conclusion that the proposed development will not have an adverse impact on the neighbourhood.
- [27] Accordingly, 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.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in attendance

Mr. V. Laberge, Mr. L. Pratt, Mr. R. Handa, Ms. N Hack

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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

Date: July 28, 2016
Project Number: 220106197-001
File Number: SDAB-D-16-164

Notice of Decision

- [1] On July 13, 2016, the Subdivision and Development Appeal Board heard two appeals filed by directly affected parties; the first was filed on June 21, 2016 and the second on June 22, 2016. The appeals concerned the decision of the Development Authority, issued on June 1, 2016, with notices to approve the following development:

Construct a Secondary Suite in the Basement of an existing Single Detached House

- [2] The subject property is on Plan 1693MC Blk 4 Lot 51, located at 7612 - 152 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Mr. Briggs' photographic and written submissions;
 - A letter from Ms. MacDonald, an Appellant who was unable to attend;
 - The approved Development Permit with attachments;
 - A parking dimension drawing;
 - Site photos;
 - A Secondary Suite Application;
 - The Respondent's written submissions; and
 - A letter and photographic submission from neighbours indicating that Mr. Briggs would speak on their behalf.

Preliminary Matter

- [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 appeals were commenced by two directly affected parties who received notice of the decision and filed their respective appeals on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Mr. R. Briggs

- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] There is inadequate parking on the subject Site to support three parking stalls, as required by the *Zoning Bylaw*. One of the stalls actually does not meet the physical specifications required for a parking space because it juts off the main portion of the Driveway and out into the front yard of the property. There is not enough space on the Driveway to accommodate three vehicles.
- [9] If the Secondary Suite application is approved, it would mean that residents of the property would inevitably have to park on the street. When vehicles are parked on each side of the street, it increases congestion. This is further intensified by the snow in the winter time. If the parking variance is granted, it remains with the property beyond the current owner and will continue to cause problems going forward.
- [10] By reducing the number of required parking stalls from three to two, it will inevitably require one stall to be located on the street. In that respect, it will be a permanent stall on the street, and, by permitting permanent parking on the street, the variance will negatively impact the character of the neighborhood.
- [11] Most of the properties in the neighbourhood have separate Garages or are able to accommodate their vehicles on their respective Driveways. There is no Garage on the subject Site, and once the concrete pad jutting off the Driveway in the front yard is removed, there will not be enough space for three vehicles on the remaining Driveway.
- [12] In response to questions from the Board regarding congestion on the street, the Appellant stated that he has never once had trouble finding parking on that street. It is sometimes congested, especially during the winter months, as the snow creates a narrower street. Although his guests have at times not been able to park directly in front of his house, they were always able to park somewhere further down the street. His guests have never been unable to find a space on the block face in which to park.

ii) Position of the Development Officers, Mr. J. McArthur & Mr. G. Robinson

- [13] The Development Officers confirmed that the subject Site is subject to the Mature Neighbourhood Overlay and complies with all regulations contained in that overlay.

- [14] The subject Site is located within the Rf1 Single Detached Residential zone, and the proposed development is a Permitted Use in this zone. In fact, one element of the general purpose of the zone is to provide for Single Detached housing while allowing Secondary Suites under certain conditions.
- [15] Upon review of the proposed development, they found that it did not meet the parking requirements of the *Zoning Bylaw*. However, they determined that the Respondent only had one vehicle registered to the property and noted that there were several bus stops in close proximity to the subject Site. Aerial imagery taken across a period of several years also consistently showed that on-street parking was lightly used in the neighbourhood. There appears to be a lot of parking available. Based on these reasons, the Development Authority's opinion was that a variance from three spaces to two spaces, including one small car space, would not have a negative impact on the neighbourhood. The smaller tandem space complies with the short stall requirements of Section 54.2(4)(iii), and the concrete pad in the front yard will be removed.
- [16] No part of the application involved a request for a permanent on-street parking spot. There is no permission being granted for such a space. Those rules are not being changed.

iii) Position of the Respondent, Ms. S. Carson

- [17] The Respondent stated that, when she bought the property, she was given the impression that the concrete pad jutting off from the Driveway in the front yard was compliant. She was surprised when the Development Authority told her that it was a problem. In any event, she takes no issue with removing it, as she was planning to do so anyway.
- [18] The proposed variance will not change the character of the neighbourhood. There is plenty of on-street parking available, and many bus stops in the area in addition to those identified by the Development Officers. She lived at the subject Site for a time and used the nearby public transportation, as she does not own a vehicle.
- [19] The immediately adjacent neighbours on either side of the property, who would be the most affected by any alleged parking deficiency, have both expressed that they have no concerns regarding the proposed development. The cars that have been parked in front of the subject Site in the past have belonged to either her parents or guests of the tenants and were only parked there for a brief period of time.
- [20] Ultimately, the proposed Secondary Suite is part of her attempt to improve the existing home on the property and bring it up to the standards of the neighbourhood. The potential to develop a Secondary Suite made it possible for her to purchase the property. She eventually plans to live in the Secondary Suite and build a Garage to better accommodate any vehicles being kept on the property.

iv) Rebuttal of the Appellant

- [21] In rebuttal, the Appellant stated that he remains concerned about the lack of off-street parking stalls. To his knowledge, the Respondent will not be allowed to park any vehicles on the initial portion of the Driveway closest to the front property line, so he is not sure if the proposed stalls on the Driveway are legally compliant.
- [22] He was also surprised to hear from the Development Officers that there is only one vehicle registered to the subject Site. His impression is that there are more vehicles associated with the property than that.

Decision

- [23] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Development is GRANTED as approved by the Development Authority and subject to the conditions stated by the Development Authority in the Approved Development Permit.
- [24] In granting the development, the following variance to the Zoning Bylaw is allowed:
- i) The minimum required number of parking stalls prescribed by Section 54.2 Schedule 1 in relation to the proposed development is varied from three to two.

Reasons for Decision

- [25] The proposed development, a Secondary Suite, is a Permitted Use in the RF1 Single Detached Residential Zone.
- [26] The Board accepts the Development Authority's position that the proposed development is fully compliant with the Mature Neighbourhood Overlay and involves a single variance reducing the generally applicable development requirements from three to two parking spaces on the Site.
- [27] The proposed development meets the general purpose of that zone, which expressly refers to allowing Secondary Suites.

- [28] The proposed development will result in the rejuvenation of a property that, as all parties agree, has fallen into disrepair and allow an affordable housing option. The proposed development also meets the principles regarding densification, affordable housing and revitalization articulated in *The Way We Grow*, the City of Edmonton's municipal development plan. In particular, it is compatible with Policy 4.4.1.1, which speaks to providing a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods, and Policy 4.2.1.1, which speaks to supporting neighbourhood revitalization, redevelopment and residential infill that contributes to the livability and adaptability of established neighbourhoods.
- [29] The Appellants argued that the proposed development will result in a deficiency in parking leading to permitting permanent on-street parking spaces and that the Secondary Suite would not comply with building code provisions.
- [30] Based on the photographic evidence and submissions of the Appellant, the Development Officer and the Respondent, the Board finds that there is consistently an abundance of on-street parking in the immediate vicinity, which is more than ample to serve all the residents and their guests.
- [31] The Board notes that on-street parking is not a Use Class in the *Zoning Bylaw*, and the proposed development does not include an application to permit a permanent on-street parking space. On-street parking is regulated by other bylaws outside the purview of this Board.
- [32] Similarly, the Board notes that the unspecified building code concerns voiced by the Appellant are outside of its jurisdiction.
- [33] The Board accepts the Respondent's submission that the most affected, immediately adjacent neighbours have expressed support for the proposed development. This submission is affirmed by the letter provided by the adjacent neighbour at 7610-152nd Street in support of the development.
- [34] Some questions were raised regarding the Mature Neighbourhood Overlay, and the Board accepts the Development Officer's submission that the development is fully compliant with that overlay.
- [35] The Board further accepts the Respondent's evidence and the Development Officer's submission that this area is well serviced by public transit, with at least two bus stops located within 200 metres of the subject Site.

[36] The Board finds that the variance reducing the number of required off-street parking stalls would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in attendance

Mr. V. Laberge, Mr. L. Pratt, Mr. R. Handa, Ms. N Hack

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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

Date: July 28, 2016
Project Number: 099312099-004
File Number: SDAB-D-16-165

Notice of Decision

- [1] On July 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 3, 2016. The appeal concerned an Order issued on May 19, 2016, by Development and Zoning Services to

Cease the General Industrial Use (Trucking Company) and remove all materials from the Site before July 4, 2016.

- [2] The subject property is on Plan 138KS Lot 8, located at 6520 - 8 Street NW, within the DC1 15767 Direct Control Provision – Maple Ridge Industrial). The Edmonton-Strathcona County Joint Planning Study Area Secondary, Garage and Garden Suites Overlay and the Maple Ridge Industrial Area Structure Plan apply to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- The Appellant's original appeal form;
 - A copy of the Stop Order;
 - The Development Officer's written submissions; and
 - The Maple Ridge Industrial Area Structure Plan.

Preliminary Matter

- [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*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellant, D. Grimble*

- [7] The Appellant reiterated the Grounds for Appeal contained in the Notice of Appeal.
- [8] The Appellant's client, a trucking business, acquired the subject Site in 2013 and owns a second Site, two doors down from the property.
- [9] They applied for a Minor Home Based Business permit on the other Site a year ago, but, because of the nature of the business, heavy material hauling, they were unable to satisfy the Development Authority with respect to the requirements for a Temporary Storage Use, which would accommodate the trucks for the business.
- [10] This particular industry has difficulty accommodating its needs within the City of Edmonton, as the opportunity lies only within one zone. They proposed a number of potential Sites to the City and were advised that these would not appropriately meet the *Zoning Bylaw* requirements for Temporary Storage.
- [11] Hurstwood, the area within which the subject Site is located, is made up of 20 lots. These lots consist of residential properties that, over time, have been used for Temporary Storage. While it has historically been a country-residential community, the area to the north has been serviced for Industrial Uses. The lands to the south are undergoing a similar development.
- [12] Developing Hurstwood to accommodate the specifications required for General Industrial Uses is difficult. It cannot be done in this area because of the cul-de-sac configuration of the lots and the lack of a potable water source. The ambiguity of the regulations contained in this DC1 direct control district also pose a problem because it recognizes Temporary Storage as a listed use but does not go as far as to say it is a Permitted Use.
- [13] They initially applied for a Major Home Based Business on the subject Site but were denied because of the nature of the Site's zoning. They are not sure where to turn now. They do not understand why they cannot park trucks in an area where everyone else is parking trucks. The use of the property is consistent with the surrounding medium-industrial area.
- [14] The Development Authority contends that what is occurring on the subject Site is a General Industrial Use. However, the Temporary Storage Use class definition in the *Zoning Bylaw* prohibits having a permanent structure on the Site. There is a grey area in terms of what is defined as a temporary structure for the purposes of a Temporary Storage Use. Anyone who does Temporary Storage also does some industrial activity on Site.

- [15] The structure on the subject Site is a Quonset hut with no foundation and no flooring. It has a gravel base and is merely used as a shelter where activities such as minor repairs, oil changes and some minor maintenance can be performed on the vehicles stored on Site. There are no hoists or lifts in the hut. The hut has electricity and is attached to the ground to accommodate some minor industrial activity.
- [16] They ask the Board to defer the execution of the Stop Order for at least three months to allow the Appellant's clients to make an application to the Development Authority for a development permit authorizing a Temporary Storage Use on the subject Site. They require an extension in time, during which they can continue conducting their business, in order to prepare their application and allow the City of Edmonton to process it. There will be no harm to the area despite the fact that the subject Site backs on to the trailer park because there are several other Temporary Storage Uses in the vicinity, including on other lots adjacent to the trailer park, and the whole area is intended to become an industrial park.
- ii) Position of the Development Officer, Mr. J. Bailey & Mr. J. Hogberg*
- [17] The Development Officers reviewed the history regarding unauthorized development on the subject Site from 2011 to present, including a refused application for a Home Based Business made by the Appellants in August, 2014 and a consequential Site inspection in February, 2015. Since the 2015 inspection, the Appellant has been in communication with the City. The Appellant was aware of the need for a permit and was given the opportunity to do exactly what is being sought at the hearing. The Appellant's agent admits that the Appellant chose not to make the application and instead kept operating while looking for an alternative solution that did not include the subject Site.
- [18] The only time they would consider a structure to be temporary would be if it were something that could be moved or made of a material similar to a tent. Some factors they would look at as indicators of permanence would be materials used for the structure and whether or not it was hooked up to utilities. In their opinion, the Quonset hut would constitute a permanent structure.
- [19] When the assessment for the subject Site was conducted in 2016, they went to the Site looking for a Use compatible with Temporary Storage, as there was a previous objection on the City's file regarding the City's objection to a Temporary Storage Use on the subject Site. However, due to the presence of the permanent industrial structure on Site, the fact that vehicles were being serviced on Site and the other activity taking place, the Development Authority determined that the actual Use is more in line with a General Industrial Use. As it is now operating, the Site actually does not qualify as a Temporary Storage Use or a General Industrial Use.
- [20] With respect to the Appellant's contention that the activities taking place on the Site do no harm, the Development Officers stated that, although there have not been any

complaints from the neighbours, the operations being conducted on the subject Site are illegal and have been taking place for a long time.

- [21] Finally, the Development Officers confirmed that they are both qualified to issue a Stop Order pursuant to the requirements of the *Municipal Government Act*.

iii) Rebuttal of the Appellant

- [22] In rebuttal, the Appellant stated that, with respect to the definition of a temporary structure, there is a grey area. If the Development Officers' interpretation of temporary structure is accurate, no structure would ever be allowed for a Temporary Storage Use on the subject Site or elsewhere, and that is not City practice in his experience.
- [23] The criteria of "do no harm" must be considered in these circumstances. Ultimately, the use of this Site does not do any harm to the surrounding area.
- [24] The Appellant confirmed that he has been aware of the permit issue and that the Appellant did not apply for a Temporary Use Development Permit but continued to operate because they were looking to solve the problem in another way by relocating.

Decision

- [25] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Stop Order is UPHOLD.

Reasons for Decision

- [26] Stop Order number 099312099-004 was issued in writing on May 19, 2016 by a duly authorized Development Authority. The Stop Order identifies the existence of a development contrary to the *Edmonton Zoning Bylaw* and the *Municipal Government Act* and orders the Appellant to "Cease the General Industrial Use (Trucking Company) and remove all materials from the Site before July 4, 2016."
- [27] Section 645(2)(a) of the *Municipal Government Act* grants the discretion to the Development Authority to issue a Stop Order if a development is not in accordance with the Act or the applicable land use bylaw.
- [28] Section 683 of the *Municipal Government Act* provides, "... a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw."
- [29] Section 5.1(2) of the *Zoning Bylaw* provides that no person "shall carry on, or cause to allow to be carried on a development without a Development Permit therefor issued under Section 12 of this Bylaw."

- [30] The parties agree that there is no Development Permit authorizing the activity that is currently occurring on the subject Site. Therefore, the Board finds that the development is not in accordance with the *Municipal Government Act*, nor with the *Zoning Bylaw*.
- [31] However, the Appellant argues that the current use of the property is Temporary Storage, which was recognized as a historic and Permitted Use in the Direct Control zone, and that the implementation of the Stop Order should be delayed to allow the Appellant to continue the current Use until a new development permit application can be made and processed by City officials.
- [32] The subject Site is zoned DC1 (15767) – Maple Ridge Industrial Direct Control. The sections of the direct control zone relevant to this argument are:
- i) Section 1, which sets out the purpose of the DC zone as follows:
 - i) To recognize existing residential and limited non-residential uses as permitted uses, but to prohibit any increase in the number of residential dwellings/lots.
 - ii) To permit improvements or additions to existing residential uses.
 - iii) To allow industrial uses with full City of Edmonton Standard services that are compatible with adjacent residential uses;
 - ii) Section 2, which identifies three existing Uses for the subject Site: Single Detached Housing, Temporary Storage and Secondary Suites; and,
 - iii) Section 3, which identifies the listed Uses and includes:
 - g. Temporary storage, and
 - q. General Industrial Uses, only where serviced to City of Edmonton standards for roads and sewers and which shall have a service connection for potable water.
- [33] The Board finds that the proposed development fits within the definition of General Industrial Use class for the following reasons:
- i) Based on photographic evidence, the submissions of the investigating Development Officers and the Appellant's submissions, the Board finds that the proposed development involves more than outdoor storage of semi-trailers and large dumpsters. The Appellant admitted that additional on-Site activities include routine maintenance, minor repairs and oil changes of the Appellant's trucks and equipment.
 - ii) The Appellant also acknowledged that many of the additional activities associated with the Appellant's trucking business occur inside, within the large Quonset hut. The hut has been in place and anchored to the ground for some time and is furnished with electricity

to facilitate these business activities. Based on the photos and these comments, the Board finds the Quonset hut is a permanent structure.

- iii) The photos also show that material changes have been made to the Site since 2013, when the Appellant became the owner. These changes include the addition of fencing, large piles of gravel and other heavy equipment tanks. It also appears that the large areas of top soil have been moved and the Site has been cleared, graded and significantly altered.
- iv) These factors indicate that the current Use does not fit within the definition of Temporary Storage in Section 7.5(5) of the *Zoning Bylaw* and is more properly classified as General Industrial Use, as defined in Section 7.5(2) of the *Zoning Bylaw*.

[34] DC1 (15767), Section 3(q) provides that General Industrial Uses is a listed use in this zone but “only where serviced to City of Edmonton’s standards for roads and sewers and which shall have a service connection for potable water.” As the parties agree that the subject Site is not serviced by potable water, the Board therefore finds that the General Industrial Use is not an authorized Use of land at this location.

[35] Accordingly, the Board finds that the Stop Order requiring the Appellant to cease a General Industrial Use was properly issued under Section 645 of the *Municipal Government Act*.

[36] Given the Board’s finding that the current Use fits the definition of General Industrial Use in Section 7.5(2), the Board also declines to defer the date for compliance with the Stop Order to provide the Appellant an opportunity to apply for a Temporary Use Development Permit. In addition, regardless of its finding about Use, the Board is of the opinion that the Appellant has been aware of the requirement to file an application for a Development Permit for over a year and has had more than ample opportunity to make that application.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in attendance

Mr. V. Laberge, Mr. L. Pratt, Mr. R. Handa, Ms. N Hack

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.