



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 1, 2017  
Project Number: 251733131-001  
File Number: SDAB-D-17-132

**Notice of Decision**

- [1] On July 19, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 19, 2017**. The appeal concerned the decision of the Development Authority, issued on May 31, 2017, to approve the following development:

**To operate a Major Home Based Business (Health Enhancement Centre - WARE MASSAGE HEALTH CENTRE), expires May 31, 2022.**

- [2] The subject property is on Plan 1323952 Blk 12 Lot 10, located at 2221 - Ware Court NW, within the (RSL) Residential Small Lot Zone. The Windermere Area Structure Plan and the Windermere Neighbourhood Structure 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 and the approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions, including a petition, an e-mail from a neighbour and an e-mail from a Realtor;
- The Respondent’s written submission; and
- Two on-line responses in opposition to the proposed development.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – a map outlining community feedback provided by the Appellant.

**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 Appellants, Mr. D. Reid & Ms. A. Reid*

- [8] The proposed Major Home Based Business will have a direct impact on the value of their home. A written opinion obtained from a reputable Licensed Realtor has been provided. The realtor stated unequivocally that the price of their home would be negatively impacted by between \$5,000.00 and \$25,000.00.
- [9] They purchased a house on a cul-de-sac because there would only be local traffic and it would be safer for their children. The proposed business will bring strange vehicles into the neighbourhood and create a safety concern.
- [10] Most of the immediate neighbours support the appeal and indicated that they also purchased houses on a cul-de-sac for the same reasons.
- [11] Concerns were also expressed about the negative connotations associated with a massage therapy business whether they are justified or not.
- [12] It will be difficult to sell their house once potential buyers become aware that a massage therapy business is operating next door.
- [13] Studies have proven that safety becomes a concern when strangers come into a neighbourhood because they are not familiar with the area and do not have a vested interest.
- [14] They questioned how the hours of operation would be monitored.
- [15] They only gathered signatures from residents who live in the cul-de-sac. It was noted that the petition submitted by the Respondent contained the signatures of several neighbours who also signed their petition.
- [16] Mr. Reid provided his neighbours with information about the proposed development and his concerns and then returned several weeks later to obtain their feedback. Some of the neighbours did not feel comfortable signing the petition.
- [17] They expressed concern that conflicting information about the proposed business was provided to neighbours by the Respondent.

- [18] They are still opposed to the proposed business even if the Respondent complies with all of the imposed conditions.
- [19] Their kitchen window overlooks the Respondent's property and they can see clothing being air dried in the rear yard. While they realize that they cannot complain about personal laundry being air dried, they expressed concern that an increase in laundry generated by the proposed business will impact the enjoyment of their yard.
- [20] They questioned the number of employees that will be associated with the business and the type of services that will be offered. They questioned where needles will be disposed of if acupuncture is offered.
- [21] They have read numerous on-line accounts regarding the impacts that this type of business can have on neighbouring property owners.
- [22] The Respondent currently works in a Clinic and they questioned why she has applied to operate a business from her home.
- [23] Mr. and Mrs. Reid provided the following responses to questions from the Board:
- a. They are not aware of any other Minor or Major Home Based Businesses operating in their cul-de-sac.
  - b. This is not a gated community but pedestrian traffic is restricted because there are no walk-through paths.
  - c. Most of the children, who live on the cul-de-sac ride their bicycles, play street hockey and other sports on the road.
  - d. There are many stay-at-home Moms with small children and shift workers who reside in the cul-de-sac. Even though the proposed hours of operation are similar to normal business hours, it will have an impact.
  - e. 13 signatures were obtained from neighbours who support the appeal; and three neighbours were neutral and chose not to sign the petition. There are only 22 residences in the cul-de-sac.
  - f. Mr. Reid submitted and reviewed a map to illustrate the community feedback, marked *Exhibit A*. Information received from the Subdivision and Development Appeal Board office about the proposed development was shared with neighbours as well as his concerns. He also spoke to the Respondent and relayed information gathered during those discussions with his neighbours.
  - g. The realtor that sent the e-mail was aware of the scope of the application and asked questions to form his opinion.

- h. It has been their experience that renters are not as careful and not as vested in the community as resident owners.
- i. Mr. Reid's massage therapist operates from a residence but it is located on an arterial roadway in a high traffic area. He is always careful and abides by the posted speed limits in this area when he attends that residence for treatment.
- j. They have often asked motorists who speed into their cul-de-sac to slow down.
- k. All of the houses in the cul-de-sac have front attached garages, some of the neighbours have multiple vehicles and parking is already a concern.

ii) *Position of an Affected Property Owner in Support of the Appellants, Mr. B. Murphy*

- [24] Mr. Murphy has three small children under the age of five and is concerned about the impact that the proposed business will have on their safety because of the increased traffic to the cul-de-sac.
- [25] He specifically chose a house on a cul-de-sac because of the increased safety and reduced traffic. He reiterated the concerns of the Appellants regarding the impact that this development will have on property values and the reduced salability of his property.
- [26] It is not fair that someone can have this type of impact on neighbouring property owners. Once the business is approved it will stay with the property.

The Presiding Officer clarified that the Development Officer approved the development permit application for a period of five years, after which time a new development permit application will have to be made.

iii) *Position of the Development Officers, Ms. R. Lee and Mr. C. Lee, in response to questions from the Board*

- [27] A Major Home Based Business is a Discretionary Use in the (RSL) Residential Small Lot Zone.
- [28] In accordance with section 75(8) of the *Edmonton Zoning Bylaw* the application for a development permit for a Major Home Based Business included a description of the business to be undertaken at the premises, an indication of the number of business visits per week, parking provisions, and where any materials or equipment associated with the business use would be stored. A condition was imposed on the approval that the number of visits associated with the business shall not exceed the number applied for with this application.

- [29] The Respondent advised that the business would be operating from one room on the main floor of the house.
- [30] Condition No. 6 of the development permit approval states that client visits must be by appointment only and that appointments shall not overlap. However, the Board could amend the condition to require staggered appointment times.
- [31] It was noted that Condition No. 10 was worded poorly and should reflect that all required parking spaces for the Dwelling and Home Based Business are provided on site.
- [32] Ms. Lee indicated that the concerns of the Appellant could be addressed by the imposition of more restrictive conditions by the Board.
- [33] Mr. Lee advised that there are four Minor Home Based Businesses currently operating within a 200-metre radius of the subject site. It was Ms. Lee's opinion that the proposed development will not change the residential character of the property or the neighbourhood. There will be no visible evidence that a business is operating inside this house.
- [34] They did not have any comment regarding the opinion of a realtor that the proposed development will negatively impact property values and the salability of neighbouring properties.
- [35] The proposed business will not increase traffic because the proposed hours of operation are between 9:00 a.m. and 5:00 p.m. when the majority of residents will be at work.
- [36] This development permit application was not circulated to Transportation Services.
- [37] The parking requirement has been met because there is an attached two-car garage and two parking spaces available on the driveway.

*iv) Position of the Respondents, Ms. L. Chen and Mr. Z. Zhao*

- [38] Ms. Chen reviewed the results of the petition submitted in support of her business and clarified that the residents of 2223 and 2226 Ware Court support the proposed business. 2205 Ware Court is outside the 60-metre notification radius.
- [39] Ms. Chen has two children and wants to work from her home while her children are at school. She currently works at a Clinic. Some of her clients live in the neighbourhood and encouraged her to apply for a permit to work from her house because it would be more convenient and they could walk to their appointments.
- [40] It is not physically possible to have more than five client visits per day. In reality only three clients will be treated per day.

- [41] There is room for one vehicle to park inside the garage while her husband is away at work and there are two parking spaces outside on the driveway.
- [42] All of her clients are by appointment only and most clients are referred. There is no advertising and signage is not required.
- [43] The den on the main floor will be the only room in the house dedicated to her business. There is no secondary suite in the house and the basement is unfinished.
- [44] She is not opposed to limiting client visits to three per day and staggered so that there is a 10 to 15 minute break between appointments. She is not opposed to limiting the business hours between 9:00 a.m. and 3:00 p.m. and on weekdays only.
- [45] She is not opposed to a condition that there shall be no non-resident employees.
- [46] She is a Registered Massage Therapist and is not trained to provide acupuncture services.
- [47] The Board should put limited weight on the submission of the Realtor because it was only his opinion that the proposed development would negatively impact property values. Mr. Zhao questioned how the business can impact the resale of other houses because there will be no signage and no visible evidence that a business is operating from their house.
- [48] There is no secondary suite, the basement is unfinished, and the home has only one kitchen.

v) *Rebuttal of the Appellants, Mr. & Mrs. Reid*

- [49] Ms. Reid clarified that the Realtor was not paid to provide an opinion regarding the impact of the proposed development on their property value.
- [50] One of the signatures of support submitted by the Respondent was from a neighbour who resides in a duplex located behind the subject site, outside the cul-de-sac and in a different housing price point.
- [51] It was clarified that a resident at 2223 Ware Court signed their petition in opposition to the proposed development. Even though one of the occupants of 2227 Ware Court opposed the development, a neutral stance was taken in order not to offend the Respondent.
- [52] It was acknowledged that 2205 Ware Court is located outside the 60-metre notification radius but it is located on the cul-de-sac.

- [53] It was acknowledged that the more restrictive conditions address some of their concerns but do not alleviate all of their fears and concerns.
- [54] Even without signage the proposed business will negatively impact property values because realtors and potential buyers can access information about the location of home based businesses through the City website.
- [55] Even though evidence was provided that there is not a secondary suite in the house, the Respondent has had several family members living in their house over the past number of years.
- [56] It is not fair that neighbours should be negatively impacted by a home based business just because the Respondent wants to stay at home with her children.
- [57] The proposed business is not in keeping with the residential character of the dwelling or the other houses on the cul-de-sac.

### **Decision**

- [58] 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 **REVISED CONDITIONS**:
1. This approval is for a five 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 August 1, 2022.**
  2. The proposed Major Home Based Business shall operate from only the one room (den) located on the main floor.
  3. All business related parking must be accommodated on site.
  4. There shall be no exterior display or advertisement located on the subject site;
  5. Client visits shall not exceed five per day, between the hours of 9:00 a.m. and 3:00 p.m., and the business is limited to Monday to Friday; No weekend business visits are permitted.
  6. Client visits must be by appointment only and staggered at 15 minute intervals; and
  7. There shall be one employee only, who must reside at the Dwelling.

The development is also subject to the following **Conditions**:

8. The business owner must live at the site. 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;
9. 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;
10. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business;
11. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced;
12. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood;
13. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes;

### **Reasons for Decision**

- [59] The proposed Major Home Based Business is a Discretionary Use in the (RSL) Residential Small Lot Zone and requires no variances to any applicable development regulations.
- [60] While the Appellant made submissions to the effect that they would not have purchased their property had they known a business could open in their cul-de-sac, the Board notes that Major Home Based Businesses are listed as a Discretionary Use in all of the Residential Zones located in the City of Edmonton.
- [61] The Board finds that the proposed Major Home Based Business is reasonably compatible with the adjacent residences and the surrounding neighbourhood based on the following:
- a) A condition has been imposed to limit the hours of operation from 9:00 a.m. to 3:00 p.m. on weekdays only. The site is located in a suburban neighbourhood where many residents will be at work during business hours. Therefore, the proposed business will not increase traffic or negatively impact traffic flow during business hours.
  - b) A condition has been imposed to limit client visits to five per day and appointments will be staggered with 15 minute intervals between appointments.



- c) The parking requirements have been met for both the proposed Major Home Based Business and the principal Dwelling.
  - d) Non-resident employees are not allowed and a condition has been imposed that there shall be one employee who is a resident of the Dwelling.
  - e) There is no outdoor business activity or storage of material or equipment associated with the business.
  - f) A condition has been imposed to limit the operation of the business to one room (den) on the main floor of the Dwelling and a condition has been imposed there shall be no exterior display or advertisement located on the subject site. Therefore, the proposed business will not change the principal character or external appearance of the Dwelling.
  - g) There is no Secondary Suite, Garage or Garden Suite existing at this location.
- [62] The Board acknowledges the opinion of a licensed realtor stating that “unequivocally” the price of the Appellant’s home would be negatively impacted by between \$5,000.00 and \$25,000.00. However, this is only an opinion and is not based on factual information that would only be determined through a formal property appraisal or a historical sales record.
- [63] During the public portion of this hearing, the Respondent accepted all of the more restrictive conditions recommended by the Board and was willing to make concessions to ensure that the proposed Major Home Based Business would not have a negative impact on her neighbours or the neighbourhood.
- [64] The Board has imposed a number of conditions which are more restrictive than the conditions generally applicable to this Use per section 75 of the *Edmonton Zoning Bylaw* to ensure that the proposed Major Home Based Business is compatible with surrounding Uses. The Board also finds that the imposition of these conditions will address the concerns of the realtor regarding a potential decrease in property values in this neighbourhood.
- [65] The Board notes that many of the concerns raised by the Appellants and other affected neighbours are based on conjecture rather than fact. For instance, the Appellants submitted concerns that the Respondent may practice acupuncture, which would lead to needle disposal issues. This is not a reasonable position; the Respondent is not a licensed acupuncturist and confirmed no such services would be provided at the subject site.

- [66] The development permit approval is for a period of five years. This will provide sufficient time for neighbouring property owners to monitor the impact of the proposed Major Home Based Business and provide feedback to the City of Edmonton before a new Development Permit application is made to continue to operate the business from this location.
- [67] Based on the above, the Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and there is no valid planning reason to deny the application for a Discretionary Use.



Mr. W. Tuttle, Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

1. This is not a Business Licence. A Business Licence must be obtained separately from the Sustainable Development Department, 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 the Sustainable Development Department, 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-17-506**

Application No. 229287073-002

An appeal by **FYZ River West Homes Ltd./Ogilvie LLP** to construct a three storey commercial building (Main Floor and 2nd Floor: Personal Service Shop, 3rd Floor: Professional, Financial and Office Support Service), located at 9851 - 70 Avenue NW, was **WITHDRAWN**.