

## **Edmonton Subdivision and Development Appeal Board**

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T5C1H4

Date: August 14, 2015  
Project Number: 171275327-001  
File Number: SDAB-D-15-165

### **Notice of Decision**

This appeal dated July 2, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (small engine mechanic - MIKE EASY MECHANIC)

On Plan 5088NY Blk 11 Lot 18, located at 14211 - 78 Street NW, was heard by the Subdivision and Development Appeal Board on July 30, 2015.

### **Summary of Hearing:**

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.

The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to approve, subject to conditions, an application to operate a Major Home Based Business (small engine mechanic - MIKE EASY MECHANIC), located at 14211 – 78 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was appealed by affected property owners.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant dated July 23, 2015;
- A written submission from the Development Authority dated July 23, 2015; and
- A copy of web responses received from affected property owners who reside within 60 metres of the subject site, one in support and one in opposition.

The Board heard from the Appellant, Mr. Devries, who provided the following information in support of the appeal:

1. He filed the appeal on behalf of himself and his neighbours after receiving notice that the application for a Major Home Based Business had been approved.

2. Mr. Devries submitted a petition signed by 18 of the 28 properties that are located within the 60 metres notification radius.
3. He referenced photographs of vehicles parked at and in close proximity to the subject site, marked Exhibit "A".
4. Based on the activity occurring at the subject site, it was his assumption that the Respondent has been operating an automotive repair business from his garage for a period of time. He has seen as many as 8 vehicles parked around the residence at different times.
5. It was his opinion that the Development Officer should have consulted with the neighbours before approving the development permit application.
6. He has witnessed the Respondent removing and moving vehicles around his residence in the evenings.
7. Mr. Devries referenced a copy of the development permit application form and noted that the Respondent described the business activities as small engine repair, lawnmowers, quads, etc. However, he has not witnessed any work of this kind occurring at the subject site.
8. He and his neighbours perform minor, incidental mechanical car work in their back yards or garages, and he would have no concerns with such activities if performed on a hobby basis.
9. Mr. Devries also questioned why the Respondent did not sign or date the Home Based Business Application Form.

The Board then heard from Mr. Michael Wayne, an affected property owner who provided the following information in opposition to the proposed development:

1. It was his opinion that there is a vehicle repair business operating at this location because they have never seen any activities associated with small engine repair occurring at the residence.
2. It was his opinion that a vehicle repair business is more suitable for a commercial or industrial zone.
3. Mr. Wayne referenced photographs of similar home based businesses for automotive repair operating in north Edmonton to illustrate the problems that can arise, marked Exhibit "B".
4. Mr. Wayne is a mechanic and has lived in the neighbourhood for 30 years.
5. Mr. Wayne and Mr. Devries expressed concern that a Traffic Impact Assessment was not completed as required by the *Edmonton Zoning Bylaw*.
6. They both agreed that multiple vehicles have been removed and the site has been cleaned up over the past few weeks. However, this probably occurred because the Respondent was advised that a Bylaw Enforcement investigator would be coming to inspect the site.
7. They also expressed environmental concerns because of the toxic fluids and other materials used for vehicle maintenance that would be stored on the site.
8. It was their opinion that the proposed development does not complement the residential nature of the neighbourhood and should be located in an industrial or commercial area.

Mr. Devries and Mr. Wayne provided the following responses to questions:

1. Mr. Devries could not provide a decisive answer in response to a question about whether or not he would still object if the proposed business was, in fact, a Small Engine Repair business and not Automotive Repair.

2. Mr. Devries and Mr. Wayne have both called Bylaw Enforcement in the past to file complaints about “abandoned” vehicles on their street, one of which was a stolen vehicle.
3. They have observed eight vehicles in and around the subject site over the past year and a half but noted that these vehicles have recently been removed.
4. They also noted that the amount of evening traffic coming and going from this residence has recently subsided.

The Board then heard from Mr. Benny Liang, representing the Sustainable Development Department, who provided the following responses to questions:

1. He referenced the photographs contained in his written submission and confirmed that the green vehicle illustrated in photographs on page 4 is parked at the same location as the black vehicle illustrated in photograph 5.
2. The Respondent informed him that the minivan parked on the driveway in photograph 6 was a personal vehicle.
3. Two vehicles can be parked inside the garage and one vehicle can be parked on the pad behind the garage, which complies with the parking requirements for a Major Home Based Business, pursuant to Section 54.2 of the *Edmonton Zoning Bylaw*.
4. The Respondent advised him that customers or couriers would not be coming to the residence.
5. Mr. Liang clarified that the photographs were taken by a Bylaw Investigator and that he did not visit the subject site.
6. In addition to details provided on the development permit application and a review of the inspection photographs, he also reviewed the City of Edmonton’s internal POSSE System and determined that there were no development-related complaints or property complaints registered for the subject site.
7. In reviewing the photographs provided by the Investigator, he looked for any signs of outdoor storage of materials associated with the proposed business such as small engine parts, tools, and chemicals, and did not see anything of that nature.
8. He did not ask the Applicant to establish ownership of the vehicles illustrated in the photographs, but accepted his word that they were his personal vehicles.
9. He did not have access to any Bylaw parking or nuisance complaints that were not registered on the property for which the application was made.
10. He was not concerned that there were no lawn mowers or other small engine equipment illustrated in the inspection photographs because the development permit application had not yet been approved.

Due to an English language barrier, the Respondent, Mr. Mohammad Darwich, was represented at the hearing by his wife, Ms. Ghaida Darwich, who spoke on his behalf. Ms. Darwich provided the following information in support of the proposed development:

1. She and her husband want to cooperate with the neighbours and have offered to show their home and activities occurring at their residence to any of the neighbours.
2. The neighbours have not seen small engine equipment or machinery coming or going from their property because the business has not and will not commence until the development permit is approved.

3. A few neighbours came and asked her husband to repair their lawnmowers but he declined because the permit had not yet been issued.
4. They do not want customers coming to their residence because they have three young children.
5. Mr. Darwich is rarely at home because he is working at one of his two businesses.
6. The proposed Major Home Based Business is a part time venture.
7. He intends to pick up small equipment that needs repair from his customer's residences with his own personal vehicle.
8. The blue Ford truck illustrated in photographs submitted by the Appellant was parked in front of their house for approximately one month. They agreed to store the vehicle for a cousin who was travelling during that time, and the vehicle has now been removed.
9. Other vehicles, including a stolen vehicle, have been towed from their street but these vehicles are not associated with their property.
10. A vehicle was towed from the Darwich's residence to the junk yard as part of their regular clean up.
11. Ms. Darwich referenced photograph 7 contained in the Development Officer's submission to illustrate that the garage walls have been sound proofed to reduce any noise penetration from the garage.
12. Mr. Darwich is a licenced mechanic, has experience dealing with hazardous materials, and is knowledgeable about proper disposal. However, these types of materials will not be used in his business. The Darwichs have three small children and pets, and have no desire to have any hazardous materials stored in their garage.
13. There are currently four vehicles on their property: two registered vehicles and two unregistered vehicles.
14. Ms. Darwich acknowledged that a truck and trailer did come to their residence for the removal of items from their yard and from the inside of their house as part of their regular clean up.
15. The van illustrated in photograph 6 of the Development Officer's submission has been towed to the junk yard.
16. Almost every resident on their street owns three vehicles and some of them are parked on the street.
17. Ms. Darwish submitted photographs marked Exhibit "C" to illustrate parking on the street during both daytime and evening hours and noted that many of these vehicles are not related to their property.
18. Her husband is a mechanic and does work on their personal vehicles at their residence. Ms. Devries submitted a Bill of Sale for a 1993 Toyota Camry, marked Exhibit "D", to help demonstrate that her husband's mechanic work is only for personal vehicles that he owns.
19. Friends and family come to visit in the evening, and the men often go out to look at vehicles as a social activity, but there is no actual mechanic work being done.
20. Mr. Devries has never spoken to her or her husband as indicated in the reasons for appeal. She also noted that the petition included 3 or 4 signatures of occupants of the same residence and that no one discussed the proposed development with her two most affected neighbours.
21. Couriers do come to their residence as a result of personal online shopping. As an example, Ms. Devries provided a copy of a shipping receipt for an online shopping order she recently placed, marked as Exhibit "E".

22. It was her opinion that the concerns of the Appellant could be related to her neighbour who has a bobcat and heavy machinery in his yard.

The Board then heard from Mr. Gallinger and Ms. Hart, who live next door to the subject site. They provided the following information in support of the proposed development:

1. They both spend a lot of time in their back yards.
2. The Respondents are very quiet and respectful neighbours.
3. Mr. Darwich works at his other business pursuits and is rarely at home.
4. The proposed business is not an income generating business for the family but is more of a hobby business.
5. Mr. Gallinger indicated that he is currently storing a minivan on his property. The Darwich family uses this minivan during the winter months.
6. A number of stolen vehicles have recently been abandoned on their street but they have nothing to do with the Respondent.
7. His son was recently issued a ticket for parking the wrong way on the street, which may have been one of the issues with respect to Bylaw Enforcement that the neighbours attributed to the Respondent.
8. They never experience any noise or hazardous fumes from the subject site and he is not aware of any hazardous materials being stored in Mr. Darwich's garage.
9. Mr. Darwich has repaired vehicles for family or friends but this cannot be considered a business venture.
10. Mr. Darwich is always responsive to requests to move vehicles to accommodate snow clearing during the winter months.

Mr. Devries provided the following information in rebuttal:

1. He appreciates the openness of Ms. Darwich but it was his opinion that the Board should have heard from Mr. Darwich because the Respondent had spoken to some of the neighbours and told them that he was an automotive repair person.
2. He also reiterated his concern that the application form was not signed by Mr. Darwich.
3. He asked the Board to review the approval of this development permit application.
4. The most adjacent neighbours were not consulted about the petition because they were storing materials for the Respondent.
5. He reiterated his observation and concerns that the proposed business is for automotive repair and not small engine repair.
6. A business of this nature is suited for an industrial or commercial zone and should not be allowed in a residential neighbourhood,
7. It was also his opinion that the Respondents are not being transparent about the business activities occurring at their residence.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:

1. This Development Permit may be revoked or invalidated, at any time, if the Major Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes.
2. The Major Home Based Business shall be operated by a resident of the Dwelling on the property and must be secondary to the residential use of the Building, pursuant to section 7.3(7) of the *Edmonton Zoning Bylaw*.
3. A minimum of three parking spaces shall be required. The parking spaces shall be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the Single Detached House or Major Home Based Business as per section 54.1(1)(c). The parking spaces on the rear driveway shall be clearly signed as a small car space, if required, pursuant to section 54.2(4)(a)(iii).
4. The Development shall comply with the regulations set out under subsections 75(1)-(6) and 75(10) of the *Edmonton Zoning Bylaw*. A copy of these provisions has been appended to this decision as Schedule A.
5. 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 August 13, 2020.

NOTES:

The approval of a Major Home Based Business (Small Engine Mechanic – Mike Easy Mechanic) does not include vehicle repair or any other repair Use that cannot occur entirely within the Accessory Building (detached Garage) and does not allow any offsite storage of business related vehicles or equipment.

This Development Permit is not a Business Licence

Signs require separate Development Applications.

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.

**Reasons for Decision:**

The Board finds the following:

1. A Major Home Based Business (Small Engine Mechanic) is a Discretionary Use in the RF1 Single Detached Residential Zone.
2. The Board finds that the proposed development complies with all the relevant requirements of section 75 of the *Edmonton Zoning Bylaw* for the following reasons:
  - a) The Applicant is also the property owner;

- b) No business visits to the property are required;
  - c) There will be no non-resident employees;
  - d) The use of hand tools and an air compressor inside the detached Garage should not create external noise or other interference for adjacent property owners;
  - e) The repair Use and material storage will take place inside the detached Garage; and
  - f) A review of the photographic evidence provided from the inspection of the site show that there is sufficient space inside the detached Garage to accommodate the business use and the parking of two vehicles to comply with the parking requirements.
3. The Board considered the concerns of the Appellant and other affected neighbours, but notes the following:
- a) The approved permit covers only mechanical work on small engines. Condition #1 prohibits extension into automotive repair services and any such extension would lead to revocation of the permit..
  - b) The consultation requirements of the *Edmonton Zoning Bylaw* under section 814.3(24) apply only when the proposed development does not comply with the Mature Neighbourhood Overlay regulations. The current application involves no variance from those regulations.
  - c) Section 687.1(a) of the *Municipal Government Act* requires the SDAB to hear from “the appellant or any person acting on behalf of the Appellant.”
4. Based on the evidence provided, the Respondent has not and will not start repairing small equipment on site until the development permit is properly issued.
5. The Board finds that the conditions imposed will ensure that the proposed Major Home Based Business is reasonably compatible with the surrounding residential neighbourhood.
6. The Major Home Based Business has been approved for a period of five years, which will allow affected property owners to monitor the approved business and provide feedback to the Sustainable Development Department.
7. Based on the above, it is the opinion of the Board 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**

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1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
  - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
  - 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 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 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. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board