

Edmonton Subdivision and Development Appeal Board

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Date: July 24, 2015
Project Number: 164646558-002
File Number: SDAB-D-15-144

Notice of Decision

This appeal dated June 11, 2015, from the decision of the Development Authority for permission to:

Move on a Residential Sales Centre building

on Condo Common Area (Plan 1421329), located at 1306C - Windermere Way SW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 9, 2015. The decision of the Board was as follows:

Summary of Hearing:

At the outset of the appeal hearing, the Chairman 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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve, an application to move on a Residential Sales Centre building, subject to conditions, located at 1306C Windermere Way SW. The subject Site is zoned Direct Development Control Provision DC1(16281) and is within the Windermere Area Structure Plan. The approved development permit application was subsequently appealed by an adjacent property owner.

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

- A written submission received from Sustainable Development on June 30, 2015.

At the outset of the hearing, the Chairman indicated that he knew Mr. Yin but felt that he did not have a conflict to hear the appeal. There was no objection from the parties in attendance to have him sit on the panel.

At the outset of the appeal hearing, the Chairman stated that the proposed development is in the DC1 Direct Development Control Provisions which is an allowable Use and no variances are required. In reviewing the Direct Development Control Provisions it must be determined if the Development Authority followed the directions of City Council.

The Board heard from Mr. Hanta, representing the Appellant, Windermere Waters Condominium Corporation (Plan 122-4161), who made the following points:

1. His main concern dates back to the actions of a previous owner and has since learned that the property has been sold.
2. The previous property owner used the subject Site as a storage area for construction with no fencing around it.
3. He provided the Board with photographs of the subject Site taken in May 2015 and stated the condition of the Site continued to take place, marked "Exhibit A".
4. The Residential Sales Centre was moved onto the subject Site but no building permit has been issued and he is concerned what the true purpose of the Residential Sales Centre will be.
5. The subject Site has an open electrical box that is unsightly and dangerous.
6. He provided the Board with photographs that were taken on June 30, 2015, marked "Exhibit B".
7. The property owners in the area are concerned with the temporary storage use for construction materials.
8. However, after speaking to the new property owners, they may not have the same concerns anymore and do not object to the Residential Sales Centre.

The Board then heard from Mr. Joselito, representing Sustainable Development, who made the following points:

1. He confirmed that no variances are required for the proposed development.
2. He confirmed that a Landscaping Plan has been submitted.
3. There is a 3.0 metres Setback on the east side of the proposed development and the other three sides are Setback 6.0 metres or greater.
4. A development permit was issued in 2012 for an Apartment Building and this is the first application for a Residential Sales Centre.
5. The proposed development is a Use listed in the DC1 Direct Development Control Provisions; therefore, he followed the directions of City Council.
6. He wanted to ensure that the proposed development will be used as a Residential Sale Centre and no other Use.

The Board heard from Ms. Zhang, representing the Respondent, Fyz River West Homes Ltd., who was accompanied by Mr. Yin, who together made the following points:

1. They read the concerns of the Windermere Waters Condominium Corporation (Plan 122-4161) and stated they have no direct involvement with the previous property owner and the Windermere Waters Condominium Association.
2. They met with the Sustainable Development Department regarding the proposed development and the location of the Residential Sales Centre.
3. They tried to resolve any issues related to the first and second phase of the proposed development.

4. The Residential Sales Centre is located away from the existing residential area which will have a minimal impact on neighbouring properties.
5. They considered the safety of the neighbouring properties when locating the Sales Centre.
6. They are marketing the project to high-end purchasers who want to downsize. The units will have an open concept floor plan.
7. They provided the Board with a PowerPoint presentation showing photographs of the Residential Sales Centre which was constructed off-site and moved onto the subject Site, marked "Exhibit C".

In response to questions by the Board, Mr. Zhang and Mr. Yin provided the following information:

1. Mr. Zhang clarified that the location of the Residential Sales Centre is in accordance to the photographs submitted.

In rebuttal, Mr. Hanta made the following points:

1. The front elevation of the Sales Centre is depicted correctly in the photographs submitted; however, the back of the building is not complete and he is still concerned about that.

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 authorizes the development of a building for the operation of a Residential Sales Centre. This permit does not allow any other use at the location of the Centre.
2. This approval is valid for a period of two years and the Development Permit expires on May 26, 2017.
3. When an application for a Development Permit has been approved by the Development Officer, the Development Permit shall not be valid unless and until any conditions of approval, except those of a continuing nature, have been fulfilled;
4. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Notification Fee of \$100.00.

6. This proposed building is not a Dwelling unit. The building shall not be used as a Dwelling prior to the registration of individual lots and the expiration and/or cancellation of the Development Permit for the Residential Sales Centre.
7. All off-premise directional signage and on-premise advertising signage, including the display of advertising copy and supergraphics on hoardings or false fronts used to enclose temporary structures, shall be in accordance with Section 59 of this Bylaw. (Edmonton Zoning Bylaw 12800)
8. All exterior lighting shall be developed in accordance with Section 51 and 58 of this Bylaw. (Edmonton Zoning Bylaw 12800 - Reference Section 82).

ADVISEMENT:

Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

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.

A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

Signs require separate Development Applications.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

Reasons for Decision:

The Board finds the following:

1. Residential Sales Centre is a Use listed in the DC1 Direct Development Control Provisions, Bylaw 16281.
2. The Development Authority indicated that in approving the development, no variances were granted to the development regulations in Bylaw 16281 or the *Edmonton Zoning Bylaw*.

3. Based on the evidence submitted, the east Side Setback was reduced from 6.0 metres to 3.0 metres.
4. Section 4(c) of Bylaw 16281 states that a minimum building Setback of 6.0 m shall be required from the east, west and south property lines. This minimum building Setback may be reduced to 3.0 m at the discretion of the Development Officer where, in their opinion, the provision of landscaping, fencing, berming, building façade treatment or other design features adequately protect the amenities of nearby residential areas.
5. The Development Authority stated that the Site Plan requires a Landscaping Plan and upon review, the Board accepts the proposed Landscaping Plan approved by the Development Authority.
6. Accordingly, the Development Authority followed the directions of City Council when approving the proposed development with a Setback of 3.0 metres and the proposed Landscaping will protect the amenities of nearby residential area.
7. No evidence was submitted by the Appellant or the Respondent regarding variances to the regulations of the Edmonton Zoning Bylaw.
8. According, the Board finds that the Development Authority followed the directions of City Council as outlined in Bylaw 16281 and pursuant to Section 641 of the *Municipal Government Act*, the appeal is denied.

Important Information for Applicant/Appellant

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

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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

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SDAB-D-15-145

Application No. 172187428-001

An appeal by Sleep Easy CPAP Ltd. VS Cleopatra's Spa to change the Use from a General Industrial Use to a Personal Service Shop operating as a Body Rub Centre on Condo Common Area (Plan 1322403), located at 9601C - 41 Avenue NW and Plan 1322403 Unit 23, located at 4019 - 97 Street NW, was **TABLED TO AUGUST 5, 2015.**