



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*

SDAB-D-18-082

Application No. 278771031-002

An appeal to leave as-built an Accessory Building (rear detached Garage), located at 3838 Allan Drive SW, was **WITHDRAWN**.



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Date: June 28, 2018
Project Number: 278644202-001
File Number: SDAB-D-18-083

Notice of Decision

- [1] On June 13, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 7, 2018. The appeal concerned the decision of the Development Authority, issued on May 2, 2018, to refuse the following development:

Construct a Semi-Detached House with front attached Garage, Basement development (NOT to be used as an additional Dwelling), fireplace, uncovered deck and veranda and to demolish Single Detached House

- [2] The subject property is on Plan 7723074 Blk 16 Lot 24, located at 3052 - 79 Street NW, within the RF1 Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s reason for appeal; and
 - Three Online responses and five e-mails in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Two Google overhead photos from 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 (the “*Municipal Government Act*”).

Summary of Hearing

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

[8] Mr. Chagger was accompanied by his business partner, Mr. A. De Leon.

[9] Extensive damage has been done to the existing house and it is currently unlivable. The house needs to be demolished and Mr. Chagger has decided to build a duplex in its place.

[10] He was aware that the development has been refused because it does not meet the locational criteria and he also acknowledged that a number of neighbours are opposed to the proposed development.

[11] The Appellants have spoken to the two immediately adjacent neighbours who have indicated that they have no concerns with the proposed development.

[12] While there are currently no other semi-detached homes or duplexes in this cul de sac, there are townhouses located to the north and a number of duplexes are located across Lakewood Road.

[13] The Appellants acknowledged that this is a large lot with a driveway running along the entire side of the house to a rear detached garage, making the site somewhat like a corner lot.

[14] The Appellant showed two overhead photos, stamped Exhibit A, to provide context to the area.

[15] Sufficient parking spaces will be provided for each dwelling (two spaces in each garage and two spaces on each driveway). Also, extra street parking is available along the island in the middle of the cul de sac.

[16] The Appellants are aware that only one family is permitted on each side of the development and no suites can be developed in the basement.

[17] The Appellants have never had any issues with a lack of ‘curb appeal’ regarding any of the properties they have built. They plan to provide landscaping in the form of grass and trees along the driveways.

[18] The Appellant plans to live in one half of the development and the other side will be for sale.

ii) *Position of the Development Officer, M. Bernuy*

[19] The Development Authority did not attend the hearing and the Board relied on the written submission of Ms. Bernuy.

Decision

[20] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. The proposed Basement development(s) shall NOT be used as an additional Dwelling. Proposed wet bar shall only be used by the household which uses the principal kitchen on the main floor. Secondary Suite Use Class does not include Semi-detached housing.
2. Except for the hard surfacing of Driveways and/or Parking Areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Edmonton Zoning Bylaw 12800*.
3. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2 (1) (a) (b)).
4. 1 deciduous tree with a minimum Caliper of 50 millimeters, 1 coniferous tree with a minimum Height of 2.5 metres and 6 shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 millimeters and coniferous shrubs shall have a minimum spread of 450 millimeters (Reference Section 55.2(1) (e)).
5. The requirement to provide trees and shrubs may be satisfied either through planting new or preserving existing trees and shrubs (Reference Section 55.6 (2))
6. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction. (Reference Section 53).
7. Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
8. Any future deck enclosure or cover requires a separate development and building permit approval

9. The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.
 10. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx
- [21] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The locational requirements as per Section 110.4(4) are waived to allow a Semi-detached House at this location.

Reasons for Decision

- [22] Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [23] The proposed development will replace an existing single detached house, which is in poor condition based on the evidence provided.
- [24] The Development Officer refused the permit because the proposed development does not meet the locational requirements in Section 110.4(4) which states:
- Semi-detached Housing and Duplex Housing shall only be located:
- a. on Corner Sites;
 - b. on Sites abutting an arterial or service road;
 - c. where both Side Lot Lines abut existing Duplex or Semi-detached Housing; or
 - d. where a minimum of one Side Lot Line:
 - i. abuts a Site where Row Housing, Apartment Housing, or a commercial Use is a Permitted Use, or
 - ii. is not separated from a Site where Row Housing, Apartment Housing or a commercial Use is a Permitted Use by a public roadway, including a Lane, more than 10.0 metre wide.

- [25] The Development Officer, in her written submission also made the comment that “[t]he increase in density in this location will have limited access to amenities that are available to higher density zones such as proximity to transit and commercial uses.” However, the Board notes that this lot is wide enough that it could be subdivided and two Single

Detached Houses could be built on the Site, both with Secondary Suites in the basement as Permitted Uses. Such a development would have a higher density than the proposed development so the Board does not consider this rationale for refusing the development to be sound.

- [26] A number of the neighbours in the cul de sac are opposed to the proposed development for a variety of reasons. Many mentioned parking issues on this cul de sac; however, the Board notes that the proposed development will have more than the required number of parking spaces with four parking stalls for each of the Semi-detached dwellings. As well, the cul de sac has additional street parking along the island in the middle.
- [27] Some of the neighbours were concerned about the prior use of the existing house and problems that arose as a result of the people living there. The Board finds that those considerations are irrelevant to its considerations.
- [28] Other neighbours felt that the proposed development would decrease property values in the area. However, there was no evidence presented to support that contention.
- [29] The two most affected adjacent neighbours did not have any objections to the proposed development.
- [30] The Board notes that this development does not have any issues with maximum Site Coverage, Setbacks or Height, which is an indication that the scale of the proposed development will not have a significant impact on the amenities of the neighbourhood. Also, the Site of the proposed development backs onto a park, which provides additional amenity area to the amenity space already available on the Site.
- [31] The Board is of the view that the appearance and scale of the proposed development will not be out of character with respect to the existing houses in this neighbourhood.
- [32] All things considered, the Board is of the view 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.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. L. Delfs; Ms. S. LaPerle; Mr. A. Peterson

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 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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Date: June 28, 2018
Project Number: 270679323-001
File Number: SDAB-D-18-084

Notice of Decision

[1] On June 13, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 16, 2018. The appeal concerned the decision of the Development Authority, issued on May 14, 2018, to refuse the following development:

Install (1) Freestanding On-premises Sign, and (1) Fascia On-premises Sign (HUSKY)

[2] The subject property is on Plan 7520348 Lot 1A, located at 5920 - 76 Avenue NW, within the AGI Industrial Reserve Zone, IB Industrial Business Zone, and IM Medium Industrial Zone.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission; and
- The Appellant’s written submission.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, T. Keogh, Husky Oil Operations Limited*

- [7] The existing Freestanding and Fascia Signs were installed in the 1980's.
- [8] Husky purchased Mohawk in the 1990's and in 2017 Husky's legal department made the decision to remove the reference to "Mohawk" from all of their signs. The subject signs are the last ones in their current network that have not yet been changed.
- [9] During the sign application process, it was discovered that the Freestanding Sign was installed on City property. The permit was therefore denied. The area in question is a short strip of property along the front of the property which is still zoned incorrectly as AGI (Industrial Reserve Zone).
- [10] Upon further investigations, Husky was informed that the signs did not meet the current zoning requirements. In order to meet the requirements of the existing bylaws, the Freestanding Sign would have to be installed 20 metres back from the current property line which would put it 40 metres back from the street.
- [11] Installing the Freestanding Sign 40 metres back from the street would cause the following issues:
- a) The sign would not be visible from the west side because of the building.
 - b) Drivers of the large trucks coming in and out of this cardlock location may not see the sign until the last minute. This could cause them to slam on their brakes creating a safety hazard.
- [12] They have received no complaints or comments from any of the affected neighbours regarding the proposed signs.
- [13] They have not had any discussions with the City regarding an encroachment agreement for the current existing sign.

ii) Position of the Development Officer, K. Mercier

- [14] The Development Authority did not appear and the Board relied on Ms. Mercier's written submission.

Decision

- [15] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:
1. The proposed Freestanding On-premises Sign and Fascia On-premises Sign shall comply in accordance with the approved plans submitted.
 2. The intensity of exposed bulbs on the Sign shall not exceed 1100 lumens (Reference Section 59.2(4)).
- [16] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Sign Area for a Fascia On-premises Sign of 2.0 square metres as per Section 59A.2(2) is varied to allow an excess of 1.75 square metres, thereby increasing the maximum allowed Sign Area to 3.75 square metres.
 2. The maximum allowable Sign Area for a Freestanding On-premises Sign of 3.0 square metres as per Section 59A.3(1) is varied to allow an excess of 6.4 square metres, thereby increasing the maximum allowed Sign Area to 9.4 square metres.
 3. The maximum allowable Sign Height for a Freestanding On-premises Sign of 1.8 metres as per Section 59A.3(1) is varied to allow an excess of 5.3 metres, thereby increasing the maximum allowed Height to 7.1 metres.

Reasons for Decision

- [17] A Fascia On-premises Sign is a Permitted Use in the (AGI) Industrial Reserve Zone. A Freestanding On-premise Sign is a Discretionary Use in the (AGI) Industrial Reserve Zone.
- [18] This is an application to update two signs that have been in existence since 1985. Apparently there have never been any complaints about these signs.
- [19] Both of the proposed signs are the same size in terms of area as the existing signs and the proposed Freestanding Sign is the same height as the existing sign.
- [20] In the course of dealing with these signs, the Appellant learned that the Freestanding On-premises Sign that had been approved in 1984 was located on City property and therefore had to be re-located. The proposed location that was chosen is necessary because the Sign has to be visible to drivers using the nearby roadway and locating it anywhere else would compromise that visibility. However, the zoning at that location poses a problem because, for some reason, the frontage of this property is still zoned AGI while the zoning for the rest of the Site is either IM Medium Industrial Zone or IB Industrial Business Zone.

- [21] Both the Fascia On-premises Sign and the Freestanding On-premises Sign are larger in area than the regulations in the AGI zone allow. Also, the Freestanding On-premises Sign is higher than the regulations allow. However, if this site were zoned IB Industrial Business Zone neither of those issues would be a problem.
- [22] The Development Officer does not have the authority to vary height, but in her written submission indicated that she was of the opinion that allowing the proposed signs would not negatively impact the neighbourhood or neighbouring parcels. The Board concurs.
- [23] It is the Board's opinion that these signs, at the proposed locations with the proposed variances, 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.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. L. Delfs; Ms. S. LaPerle; Mr. A. Peterson

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