



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
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SDAB-D-19-090

Application No. 308648088-001

An appeal to change of Use from Health Services to Minor Alcohol Sales with a Floor Area of 186.36 m² was **TABLED TO JULY 10, 2019.**



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Date: July 5, 2019
Project Number: 300228562-001
File Number: SDAB-D-19-091

Notice of Decision

- [1] On June 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 27, 2019**. The appeal concerned the decision of the Development Authority, issued on May 17, 2019, to approve the following development:

Construct a 4 Dwelling unit Row House with Unenclosed Front Porches, fireplaces, and rear landings.

- [2] The subject property is on Plan 5970HW Blk 10 Lot 27, Located At 7804 - 94 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the proposed plans and the approved Development Permit;
 - The Development Officer’s written submissions including a memorandum from Subdivision Planning (Transportation);
 - The Appellant’s written submission; and
 - A letter of support for the proposed development from the Holyrood Community League.

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.

Summary of Hearing*i) Position of the Appellant, M. Ramirez*

- [7] Mr. Ramirez has lived in this community for 15 years and is not against redevelopment but is concerned that the proposed development is adding too many dwelling units to the subject site.
- [8] There are already sightline issues when exiting the alley due to the large number of cars and buses parked in the area. The school west of the proposed development brings extra traffic and parking congestion to the surrounding roads during drop-off and pick-up times. The proposed development will only add to these parking issues and a new garage will further impede sightlines.
- [9] It is his opinion that the occupants of the proposed development will not use a future garage as it will be too difficult to back into the alley; the apron is not large enough and the alley is only 15 or 16 feet across.
- [10] The Presiding Officer reminded the parties that a garage application is not before the Board and the proposed development includes a parking pad.
- [11] Mr. Ramirez provided the following responses to questions from the Board:
- a) He used an overhead map to show the location of his house, the exit from the alley onto 94 Avenue and the areas where parking congestion occurs during school times.
 - b) The parking situation is worse in the winter with the snow.
 - c) He would prefer that vehicle access to the proposed development be directly off of 94 Avenue rather than from the alley.
 - d) Mr. Ramirez confirmed he did not have any concerns with the required variances that relate to the site width and the reduced rear setback.

ii) Position of the Development Officer, J. Xie

- [12] The Development Authority did not attend the hearing and the Board relied on Mr. Xie's written submission.

iii) Position of the Respondent, C. Langier

- [13] Mr. Langier is attempting to provide affordable housing options for families. The units of a four dwelling Row House can be offered at a much better price point than those of a three dwelling Row House or a skinny house.

- [14] The subject site was re-zoned in 2018 to RF3 Small Scale Infill Development Zone. This re-zoning was not contested by anyone and the Holyrood Community League is in full support of the proposed development.
- [15] There is a bus station directly across the street and the proposed development will be near the Bonnie Doon LRT station; therefore, some occupants may not require a vehicle.
- [16] There is ample on-site parking and the City Transportation Department fully supports the proposal. In response to the Appellant's suggestion that vehicular access be from 94 Avenue rather than the alley, this access would never be permitted by City Transportation.
- [17] Mr. Langier recently built a development with this exact floor plan in Westmount and the four families living there are very happy and the community is supportive. The rear aprons at the Westmount location are only 2.5 metres but work very well. The rear aprons at the subject site are significantly longer.
- [18] Sightlines and access will improve once the proposed development is completed. The site currently has fences and an overbuilt garage which contribute to these issues.
- [19] When exiting the alley a vehicle must first cross a sidewalk and then a boulevard with trees; there is ample opportunity to see any oncoming vehicles.
- [20] In summary, Mr. Langier is proud of the design and feels it meets the "missing middle development" that the City is looking for. The proposed development will enhance the community.
- [21] Mr. Langier provided the following responses to questions from the Board:
1. He has not received any feedback from the immediate neighbours.
 2. The alley is similar to any other alley in Edmonton and the proposed aprons at 5.69 metres are larger than what most of the other properties along this alley have.
 3. He intends to build a garage at some point. This would be built on the same footprint as the proposed parking pad.

iv) Rebuttal of the Appellant

- [22] Mr. Ramirez declined the opportunity for rebuttal.

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.
- [24] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum required Rear Setback of 18.3 metres (40 percent of Site Depth) pursuant to section 814.3(4) is reduced by 2.05 metres (4 percent of Site Depth) to permit a Rear Setback of 16.25 metres (36 percent of Site Depth).
 2. The minimum required Site Width of 14.8 metres pursuant to section 140.4(4)(c) is reduced by 2.1 metres to permit a Site Width of 12.7 metres.

Reasons for Decision

- [25] Row Housing is a Permitted Use in the (RF3) Small Scale Infill Development Zone.
- [26] The Board accepts the conclusion of the Development Officer that the corner cut-out of the subject Site on the west boundary creates a hardship and allowed the Development Officer to grant a variance with respect to Site Width. The Board has granted this variance as the actual size of the subject Site does meet the required 14.8 metres visually and practically, just not from a legal property line perspective.
- [27] The subject Site borders a significant sidewalk and boulevard between 94 Avenue and the Side Lot Line which helps mitigate any potential negative impact of granting the variance to Site Width.
- [28] Regarding the 2.05-metre variance granted to the required Rear Setback, the Board was presented with no planning reasons as to how granting this variance would have any negative impact on the neighbourhood.
- [29] Granting the variance to the required Rear Setback has no impact on the Amenity Areas required under the *Edmonton Zoning Bylaw* nor does it create any other variances such as the minimum required separation distance from a potential detached Garage.
- [30] The Appellant was asked and confirmed that he did not have an issue with either of the variances that are required. His concerns are with respect to parking, site access and traffic congestion. The Board notes that the proposed development meets the minimum parking requirements and Subdivision Planning (Transportation) has no objections to the proposed development.

- [31] The Board accepts the submission from the Holyrood Community League supporting this development.
- [32] Based on the above, 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle, Mr. A. Bolstad, Ms. M. McCallum, Mr. L. Pratt

CC: Development & Zoning Services – Mr. J. Xie / Mr. A. Wen

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: July 5, 2019
Project Number: 223062441-003
File Number: SDAB-D-19-092

Notice of Decision

- [1] On June 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 28, 2019**. The appeal concerned the decision of the Development Authority, issued on May 22, 2019, to approve the following development:

**Change the use from a Single Detached House to a Lodging House
(maximum 6 residents).**

- [2] The subject property is on Plan 5397MC Blk 3 Lot 31, located at 11136 - 48 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies 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, proposed plans and the approved Development Permit;
- The Development Officer’s written submission;
- The Respondent’s letter of intent for the proposed Lodging House;
- The Appellants’ written submissions and attachments;
- Public responses in opposition to the proposed development with attachments (nine properties opposed, one opposed without an address);
- Opposition from Malmo Plains Community League; and
- One online response from a property in support of the proposed development.

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

- Exhibit A – A Map of the Malmo Plains neighbourhood.

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 Appellant No. 1, A. Chabun

- [8] The neighbourhood was developed in 1964 and is closed in on three sides by Whitemud Drive and other major roads. The only three exits from the neighbourhood connect to 51 Avenue.
- [9] The neighbourhood was originally zoned RF1 (Single Detached Residential Zone) and changing it to multi-family housing would drastically change the nature of the neighbourhood. Families will tend to stay away because of complications brought on by multi-family development.
- [10] Mr. Chabun provided the following responses to questions from the Board:
- a) Rooming houses tend to bring in a more transitory clientele and will drive away single families.
 - b) The nature of the subject house will change because the owner will have to partition the living room in order to accommodate all of the occupants. All of the original houses are from the 1960s and approximately 1,200 square feet in size with very small bedrooms.
 - c) Parking restrictions are in place in the areas marked in blue on the map (*Exhibit A*) and residents must display a permit in order to park on the roadways.
 - d) There are other rental properties in the neighbourhood that he is aware of but they are rented out as a Single Detached House. He is not aware if any basement suites exist in the area.
 - e) A multi-family development will bring an increase to vehicle traffic to the neighbourhood.
 - f) He has not spoken to the property owner of the subject site regarding any of his concerns.

ii) Position of the Appellant No. 2, P. Nowak

- [11] Mr. Nowak owns the (west) abutting property to the subject site. He is opposed to the proposed development because it is comparable to a mini-hotel.

- [12] Malmo Plains is a family and community based neighbourhood and the Lodging House will interfere with this current character. Tenants of a Lodging Houses change frequently, are detached from the community and do not support community activities.
- [13] The Lodging House will have a negative impact on the use, enjoyment, safety and property value of neighbouring houses.
- [14] The building codes have changed since the subject site was developed and the windows are not large enough to allow residents to escape in the event of a fire. Mr. Nowak is concerned that a fire at the proposed Lodging House could spread to this property.
- [15] The property is not properly managed for the following reasons:
- a) The garage is in disrepair.
 - b) Weeds are not controlled.
 - c) Cigarettes butts are thrown around and carried by the wind to neighbouring properties.
- [16] Privacy issues will escalate with the increased number of tenants living in a Lodging House compared to Single Detached Housing. Higher fences will be required to provide adequate privacy.
- [17] The increased parking demand and traffic generation from the proposed development is out of scale with the surrounding Single Detached Houses located on the block. Increased traffic will cause further damage to the alley which is already in poor shape.
- [18] There is plenty of accommodation for students on campus. Mr. Nowak cannot see a single positive reason to allow this development which has already been operating as a Lodging House.
- [19] Mr. Nowak provided the following responses to questions from the Board:
- a) Mr. Nowak's property abutting the subject site has been rented out by the same family for over 14 years.
 - b) Vehicles are currently not able to park at the rear of the subject site. He has seen at least one or two vehicles on the front driveway.

iii) Position of Affected Property Owners in Support of the Appellants

M. Dodson

- [20] Ms. Dodson is an affected property owner and received a notification letter.

- [21] There is a high amount of foot traffic in the neighbourhood because of the nearby LRT and transit centre. At the direction of City Transportation a 10-foot wide opening was created in the barrier fence along 111 Street to provide pedestrian access into the neighbourhood. One of the consequences is that the neighbourhood has become very much a public area.
- [22] The parking restrictions in the neighbourhood came into place after the LRT arrived.
- [23] There are seven approved secondary suites nearby that she is aware of including many other rentals. There are only two households with an owner present that she could bring a concern to. There are at least two unapproved Lodging Houses operating in her end of the neighbourhood. These developments have been established mostly in reaction to the proximity of the LRT.
- [24] The subject site has a mini-hotel aspect to it. People often show up for a day or two. A Lodging House adds to alienation and leads to a reduction in the sense of security that established neighbours bring to the area. There are fewer eyes on the street in terms of watching for the increased petty crime that the neighbourhood has experienced in recent years.
- [25] In her experience there is a greater probability of lack of maintenance when landlords are absent. Ms. Dodson has had to contact Bylaw Enforcement regarding grass not being cut and snow not being cleared.
- [26] She supports the Community League's letter which outlines the various pressures and uncertainties affecting the community. There is a need to take a pause and to review what is going on, what the plan is and come together to adapt or to deal with the issues.
- [27] She did go to the door of the subject site but the people who answered said they were tenants and did not have any information for her. She is unaware of how to find out who the subject property owner is.

D. Huculak

- [28] Mr. Huculak and his wife have lived a few houses to the east of the subject site for over 40 years.
- [29] He agrees with the previous speakers and expressed concerns with regard to security and increased traffic. The area has changed and there have been two attempted break-ins to his garage during the last six months.
- [30] He acknowledged that the LRT has created a significant impact to the neighbourhood and has resulted in increased traffic on 48 Avenue and in the back alley.

K. Jocksch

- [31] Mr. Jocksch and his wife live across the lane and to the north of the subject site. His wife grew up there and they renovated their home eight years ago.
- [32] Once the subject site changed ownership maintenance stopped. Some trees in the rear yard were trimmed several years ago and the pile of branches is still there. There is minimal upkeep to the front and rear yard.
- [33] There are other rental homes in the area which are reasonably well taken care of and the occupants are good neighbours.
- [34] Many of the properties in the neighbourhood require work given their age. You can see which homes are occupied by the owners as they have been renovated or are in the process of being renovated.
- [35] There is a group home nearby which seems to be functioning well.
- [36] He agrees with the comments of the previous speakers and confirmed that the LRT access has created issues.

A. Detkov

- [37] Mr. Detkov lives two properties away. He has seen up to seven different people at the subject site at one time. It was a hotel at one point with new occupants arriving daily. Currently, new people arrive weekly. Occupants come and go either very early or very late in the day. Headlights from vehicles shine into his windows.
- [38] It is not uncommon to see three to four young people chatting with each other and meeting friends. He can hear them from his front porch.
- [39] He has nothing against six people living at a site. His objection is to six strangers living together for a short period of time.
- [40] The area has deteriorated during the 23 years he has been living there. All of the high density rental properties have been a detriment to the neighbourhood. A basement suite is different than a Lodging House because the property owner usually still lives on-site and maintains the property.
- [41] The subject site has been operating as a Lodging House for at least three years.

D. Smalian

- [42] Ms. Smalian has similar concerns to her neighbours. Her biggest concern is the transient nature of the renters and the negative impact this causes to the value of neighbouring houses.

[43] The subject site is not well maintained. They are not good neighbours and do not respect rules and regulations.

iv) Position of the Development Officer, R. Zhou

[44] The Development Authority did not attend and the Board relied on Mr. Zou's written submission.

v) Position of the Respondent, W. Yin, representing PHD Homes Ltd.

[45] Mr. Yin does not own the property and is acting as an agent on behalf of a friend of his who is the owner. His friend has owned the property for less than two years.

[46] None of the tenants currently own a vehicle. At one time there was a student who was delivering pizzas and this tenant was evicted by the property manager. All of the residents use the LRT to attend university and none of them have bicycles.

[47] There is a no-smoking policy and none of the current occupants are smokers. There is a noise policy in place and partying is not permitted.

[48] A professional property manager has been hired to take care of the grass and the snow.

[49] There will be no exterior or interior alterations to the building as a result of the approved permit. No changes are planned to the garage as it is not used; however, if required the garage can be removed.

[50] When the owner applied for a Lodging House he was told by the City that the threshold capacity of the neighbourhood was nine for Special Residential Facilities; his was the second application for a Lodging House. It took one year and two months for the approved permit to be issued.

[51] There is no requirement for a loading space. All rooms are fully furnished and appliances are in place. Residents use public transportation or walk to purchase their own groceries.

[52] Residents of the Lodging House are all from a foreign country and have a good long-term relationship with each other. They act like a family and have lived there for at least 1 ½ years.

[53] Mr. Yin provided the following responses to questions from the Board:

1. He acknowledged that there seems to be a lack of communication between the property owner and the neighbours.
2. The vehicles that were seen parked in the front driveway could have been visitors.

3. It would cost more for the residents of the Lodging House to live on campus.
4. There has been a property management company involved with the site since his friend took possession of the property.

vi) Rebuttal of the Appellant

- [54] Mr. Chabun declined the opportunity for rebuttal.
- [55] Mr. Nowak thanked the Board for their time and for listening to the neighbourhood concerns.

Decision

- [56] The appeals are **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.
- [57] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The requirement for 1 loading space per Section 54.4(1)(a) and Section 54.4, Schedule 3(2) is waived.

Reasons for Decision

- [58] A Lodging House is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [59] The Board has determined that the proposed Lodging House is reasonably compatible with the surrounding neighbourhood. There will be no changes to the exterior physical structure; therefore, the size, scale and appearance of the existing building will not differ from the surrounding residential development.
- [60] When City Council allowed Lodging Houses to be a Discretionary Use it did so in conjunction with providing some direction on the maximum number of Special Residential Facilities that can exist in any one neighbourhood per section 96 of the *Edmonton Zoning Bylaw*. The Board accepts the calculation of the Development Officer that the Malmo Plains neighbourhood has a maximum threshold of nine Special Residential Facilities. This application is only the third Lodging House approved in the Malmo Plains neighbourhood.

- [61] The Board notes that the only variance required in this application is for one deficient loading space. Therefore, the Board concludes that the balance of this application fully complies with all regulations of the *Edmonton Zoning Bylaw*.
- [62] The Board waives the requirement for one loading space based on the Respondent's presentation that the Lodging House is fully furnished and moving appliances and furniture would not be required. Further, none of the neighbours in opposition demonstrated that waiving the loading space requirement would negatively impact them.
- [63] The Board notes that part of this application approval requires the Respondent to remove the existing front Driveway access and repair the sidewalk and curb. This would increase the on-street parking availability. The removal of this Driveway will help ensure that the Dwelling and property are more characteristic to the neighbourhood.
- [64] The Board heard from many affected property owners regarding lack of site maintenance and unacceptable operations of the current Dwelling. These concerns relate to Bylaw Enforcement and are outside the Board's purview. The Board has no comment in this regard.
- [65] The Board was empathetic to the adjacent property owners with respect to how the Malmo Plains neighbourhood has changed during the time they have been residents. While the Board may not be able to conclude specifically, it does believe that the close proximity to the LRT has had some negative impacts. Again, the Board cannot provide any further comments in this regard.
- [66] The Board also notes that the furthest east portions of Malmo Plains (which includes the subject application) have a significant component of rental properties of all kinds and varieties due to the proximity of the LRT station. A portion of the east side of Malmo Plains is under a resident parking restriction which in itself can lead to a conclusion that the proximity to the LRT station has had some impact to this neighbourhood.
- [67] Based on the above, the Board finds that the proposed development is reasonably compatible with the neighbourhood and 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle, Mr. A. Bolstad, Ms. M. McCallum, Mr. L. Pratt

CC: Development & Zoning Services – Mr. R. Zhou / Mr. A. Wen

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