



**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

Date: March 27, 2019
Project Number: 289798215-001
File Number: SDAB-D-19-033

Notice of Decision

- [1] On March 13, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 19, 2019**. The appeal concerned the decision of the Development Authority, issued on February 14, 2019, to refuse the following development:

Change the use of the main floor from Professional, Financial and Office Support Service to General Retail Store and to construct interior and exterior alterations (Flowers By Merle)

- [2] The subject property is on Plan 2616CL Blk 23 Lots A,B, located at 12320 - 105 Avenue NW, within the (CB1) Low Intensity Business Zone. The Main Streets Overlay and the West Ingle Area Redevelopment Plan apply to the subject property.
- [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 written submission including photographs; and
 - One letter from an adjacent business in support of the proposed development.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Photograph 1B, submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Chairman 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. (“MGA”)

Summary of Hearing

i) Position of the Appellant, Mr. Worrell

- [8] Mr. Worrell, the owner of Flowers by Merle, explained to the Board that the business has operated for 53 years and services the whole City of Edmonton.
- [9] He gave a brief account of the business and what has led to the current appeal. In 2017, it was proposed that the LRT was to be built down Stony Plain Road, which became a concern for the business in the location it was in.
- [10] The business’ five year lease ended in August 2018, so Flowers by Merle looked for a new location for the business around that time and found an appropriate location at 12320 - 105 Avenue NW, the subject Site.
- [11] The building on the subject Site was found to be suitable for the business as it allowed for the Permitted Use of a General Retail Store. It also allowed for easy access for customers.
- [12] The current building was developed in 1962 as a six unit apartment building. In 2007, the owner of the building demolished the apartments and developed one office on the second floor, an office on the main floor, and a general office/retail space on the other side of the main floor. The other two apartment spaces on the second floor were left in a demolished state.
- [13] A gravel front driveway was created on the east side of the building with additional landscaping, and all the grass in front of the site was removed sometime prior to Flowers by Merle moving into the building.
- [14] Mr. Worrell referred to photograph 1a of his submission, showing there is gravel in front of the building that was there when they moved to the site.
- [15] Also prior to moving into the building, Mr. Worrell explained that there was a tailoring shop on the side of the gravel area, which used that gravel area as an assembling area for the tailor, giving reason for why the gravel existed.
- [16] He provided the Board with photograph 1b showing coin operated parking metres in front of the building. He stated that the metres were originally introduced onto this street as commuters would park their vehicles in this area and those individuals take the bus from this location (Exhibit A).

- [17] Mr. Worrell referred to photograph 1 of his submission, showing the new EPark signs. He noted that the coin operated parking metres had been removed and replaced with the EPark system, which is much more complicated to use than the traditional coin operated metres. He noted that many of his cliental were seniors and struggled with using this system. He indicated that he himself had issues with the system when he has parked in this area and has had his vehicle tagged.
- [18] He approached the parking department in June to consider either a 15-minute passenger loading zone or a 30-minute commercial loading drop zone to be located on the street in front of the property. This loading zone would replace one of the existing hourly paid on-street parking stalls. The request for a loading zone was refused.
- [19] The majority of his customers are at the subject Site for approximately 15 minutes to pick up a pre-made floral arrangement and other miscellaneous items. The requested parking in the front yard is important for the business.
- [20] The graveled area on the subject Site was finished with asphalt with some greenery added as an alternative to the on-street loading zone request that was refused.
- [21] He referred to the letter sent to his Councillor dated August 8, 2018 showing that there is a permitted 15-minute loading zone sign in front of a building on 109 Street south of 104 Avenue. In his opinion, he should be granted the same loading zone sign.
- [22] He referred to photograph 2 of his submission, showing the driveway off 105 Avenue providing access to the rear of the apartment building, which fronts onto 124 Street. There is a City of Edmonton garbage bin located on the City right-of-way. He spoke to the Development Officer regarding this concern and was informed that even though the bin is located along 105 Avenue, since the building faces 124 Street, this is considered the rear of the building.
- [23] He referred to photographs 3 and 3a of his submission, showing POGO vehicles parking on the street for a long period of time which have not been issued tickets from the City.
- [24] The POGO vehicles are left for several days in front of the subject Site leaving only one metered parking stall for direct access to the store.
- [25] The property directly across the street has surface parking to the edge of the sidewalk with no screening. He noted that he was informed that because this parking lot is to the side of the building that is not an issue. He does not agree as the property is exposed to 105 Avenue and is not screened, which he believes does not comply with regulations of the Main Streets Overlay.
- [26] He referred to photograph 5 of his submission, showing a property along 105 Avenue that has a front drive crossing with five cars parked in front of the building.

- [27] He referred to photograph 6 of his submission, showing a property on 105 Avenue that has a surface parking stall on the right-of-way between the sidewalk and the property.
- [28] He referred to photograph 7 of his submission, showing a liquor store that has a parking lot in front of the building. There is only boulevard grass for landscaping on this property.
- [29] He referred to photographs 4 and 4a of his submission, showing the building across the street where cars park behind the building. In his opinion, cars are parked behind the building but look as if they are on the Avenue and it is his opinion that customers for his business should be allowed to as well.
- [30] In his opinion, the renovations are minor which enhances the building and the neighbourhood.
- [31] He understands that the area is in transition and is looking to its future as a pedestrian friendly neighborhood. However, he does not believe that this is actually occurring because people are still using cars to get to work and to their favorite shopping venues in that area.
- [32] The previous business location on Stony Plain Road was in the heart of the Glenora and Westmount Districts and, in the majority, local residents drove to that location. At the new location, besides the parking stalls in front of the store, there are parking stalls on the street on the north side of the shop that are filled early in the morning by people parking their cars to take the bus to downtown for work.
- [33] He recognized that in the future, this building will be a focus of redevelopment and that the Main Street Overlay will become an important part of the redevelopment application.
- [34] He noted that he provided the City with a plan to add flower planters on the right-of-way, which he believed would provide a better visual enhancement to the street.
- [35] The subject Site had parking in the front of the building prior to the Bylaw changing in 2011 and 2016.
- [36] Mr. Worrell provided the following information in response to questions by the Board:
- a. The business occupies the whole building with retail on the main floor and storage on the second floor.
 - b. There are six parking stalls at the rear of the building that are used for employee parking.
 - c. Parking could take place in the rear lane if needed. The adjacent business has an excess of parking where cars could park on occasion.

- d. There are four (4) or five (5) public, on-street parking spaces in front of the hair salon and four (4) public, on-street parking spaces in front of the Living Sounds Hearing Centre.
- e. There is metered parking on one side of 124 Street only. The other side provides free parking.
- f. The walkways are kept clean as clients carry large packages from the building to their car.
- g. He is in agreement to all of the suggested conditions from the Development Officer except for condition No. 10, which they are appealing.
- h. The intention of the Overlay is to enhance the district. In his opinion, once the LRT construction is started, it will be difficult for cars to get around which will affect the Avenue and limit parking, which will negatively affect the district.
- i. Several buildings in the area are in transition and waiting for the LRT so some of the properties do not have landscaping complete.
- j. There are 15-minute loading zones throughout the City. He recognized that a 15-minute loading zone may restrict people from parking and taking the bus.
- k. Deliveries for the business take place at the rear of the building.

ii) Position of Ms. Harper, an employee of the Appellant

[37] Ms. Harper stated to the Board that some of the parking in the area is free and some is metered.

[38] She noted to the Board that parking in the area is inconsistent and confusing for people to know where they have to pay to park.

iii) Position of the Development Officer, Mr. Kennedy

[39] Mr. Kennedy explained to the Board that the main concern regarding the application for Flowers by Merle is the parking and hard surfaced area in front of the business.

[40] The landscaping was reviewed when the application was made for exterior alterations. Even though the parking area existed when the Appellant purchased the property, the City wants to update what is already there which may include adding trees or shrubs. He noted that the west side of the property meets the requirements.

[41] He was unaware that the business occupied both floors of the building as the application was only for the main floor. However, he believed that using the top floor of the building would not affect the parking calculation.

[42] Trash collection is to be on-site and screened. The dumpster shown in the Site Plan was not taken into account during the review.

It was noted to the Board Officer that the dumpster is not on the subject Site but services the neighbouring property.

[43] Mr. Kennedy provided the following information in response to questions by the Board:

- a. Development Compliance will need to address the location of that dumpster on the neighbouring property.
- b. Access off of the rear lane would not create additional conflict with parking behind the building.
- c. Mr. Kennedy explained to the Board that each time there is a development application, it is a chance for the Development Authority to increase compliance incrementally with the plan, depending on if the development interferes short term or long term with the planning goals of the neighbourhood.
- d. He could not comment on how things will be impacted with the LRT construction. He believed that bringing properties into compliance is better now than later.
- e. The front of the subject Site faces the avenue and the rear of the neighbouring apartment building faces the abutting lane.
- f. He noted that the Development Authority considers each property on its own. The subject Site fronts onto 105 Avenue with parking at the rear of the property. The apartment fronts onto 123 Street with parking considered to be at the rear of the building.

iv) Rebuttal of the Appellant, Mr. Worrell

[44] Mr. Worrell noted that the property existed as it does when he moved to the property.

[45] The upper floor is no larger than the main floor and is only used for storage.

[46] Mr. Worrell pointed out that there were a lot of vagrants in the area when they moved to the building but the situation has now improved.

[47] Mr. Worrell believed that the alterations to the building are more aesthetically pleasing than what was there previously and has improved the area.

- [48] The purpose of providing the extra parking in the front yard is because Flowers by Merle is trying to make the building more accessible for the customers.
- [49] Mr. Worrell is willing to add planters in the City right-of-way.
- [50] Mr. Worrell explained that new asphalt was added on top of broken up asphalt. This will make it easy to keep clear of snow in the winter.
- [51] The Use of the building was for an Apartment building until 2007. He confirmed that Maxwell Tailors was operating in the building prior to Flowers by Merle moving into the building. Maxwell Tailors had issues with on-street parking so they had initially developed the gravel parking in front of the building to use for customer parking and other activities of the business.
- [52] Again, he noted that people were parking in front of the building before he paved the area.
- [53] Trash collection for the business is in the rear lane and is partially in the parking area in the rear lane.

Decision

- [54] 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 amended **CONDITIONS**: (**Condition #10 retained**)
1. In all non-industrial developments, the design and use of exterior finishing materials shall be to the satisfaction of the Development Officer who shall ensure, as far as reasonably practicable, that materials shall be used that ensure that the standard of the proposed buildings and structures shall be similar to, or better than, the standard of surrounding development. (Reference Section 57.3(1)).
 2. Loading, storage, and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways or a LRT line in accordance with the provisions of Section 55.5 of this Bylaw. If the rear or sides of a Site are used for parking, an outdoor service or display area or both, and abut a Residential Zone or a Lane serving a Residential Zone, such areas shall be screened in accordance with the provisions of subsection 55.4 of this Bylaw. (Reference Section 330.4(5)).

3. All mechanical equipment, including roof mechanical units, shall be concealed by screening in a manner compatible with the architectural character of the building or concealed by incorporating it within the building. (Reference Section 330.4(7)).
4. Main building entrances for all Uses shall be designed for universal accessibility. Level changes from the sidewalk to entrances of buildings shall be minimized. Sidewalk furniture and other elements shall be located out of the travel path of entrances to ensure they are not obstacles to building access. (Reference Section 819.3(20))
5. Each Façade facing a public roadway other than a Lane shall have a minimum of 70% clear, nonreflective glazing on the exterior of the ground floor to promote pedestrian interaction and safety. Proportion of glazing is calculated as a percent of linear meters at 1.5 metres above finished Grade. (Reference Section 819.3(22)).
6. A maximum of 10% of the first Storey glazing may be covered by Signs. The remainder of the glazing shall remain free from obstruction. (Reference Section 819.3(23)).
7. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind, except for the purpose of Special Events. (Reference Section 54.1(1)(c)).
8. Parking spaces for the disabled shall: be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists; be included, by the Development Officer, in the calculation of the applicable minimum parking requirement; and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference Section 54.1(3)).
9. All access locations and curb crossings shall require the approval of Transportation Services (Reference Section 53(1)).
- 10. The applicant must remove the parking area, including Hard Surfacing located within the road right- of-way and restore the area back to the satisfaction of the City.**

GENERAL NOTES:

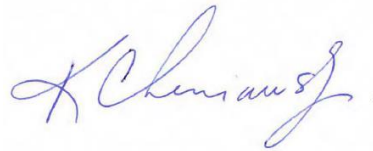
1. The Development Permit shall not be valid unless and until: any conditions of approval, except those of a continuing nature, have been fulfilled; and the time for filing a notice of appeal to the Subdivision and Development Appeal Board as specified in subsection 21(1) of this Bylaw and the Municipal Government Act has passed (Reference Section 17.1(1)).
2. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
3. Signs require separate Development Applications.
4. 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.
5. 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.
6. An approved Development Permit means that the proposed development has been reviewed against the provisions of this Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.

Reasons for Decision

- [55] A General Retail Store is a Permitted Use in the (CB1) Low Intensity Business Zone.
- [56] The proposed development complies with all relevant development regulations with the exception of the restrictions on parking found in the Main Streets Overlay.
- [57] The General Purpose of the Main Street Overlay in Section 819.1 is to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

- [58] The Board acknowledges that one of the ways the Main Streets Overlay attempts to achieve those goals is to confine parking to the rear of any building located within this Overlay.
- [59] It is difficult for a pedestrian walkway to have “visual interest” and “transparent storefront displays” when there are parked cars in between the sidewalk and the store front.
- [60] For this reason, all parking shall be located in the rear of the building as outlined in Section 819.3(8) that states: *all surface parking and underground parking access shall be located at the rear of the building and be screened from view using methods such as Landscaping, public art, and Crime Prevention Through Environmental Design principles to enhance the appearance, natural surveillance and safety of the Lane.*
- [61] The Development Officer confirmed that the property is required to have six (6) on-site parking spaces. The six (6) required parking spaces are located at the rear of the building, complying with the requirements of the Zoning Bylaw.
- [62] In addition, there is on-street parking in the close proximity to the subject Site which increases the amount of parking available for the business.
- [63] The Appellant stated that the majority of the customers stay for approximately 15 minutes, which lessens the parking needs for the General Retail Store.
- [64] The Board, therefore, declines to waive the requirements of Section 819.3(8).
- [65] Furthermore, in order for the Board to grant a variance, the test found in Section 687(3) of the *Municipal Government Act* would have to be met:
- 687(3) In determining an appeal, the subdivision and development appeal board
- ...
- (i) the proposed development would not
- (A) unduly interfere with the amenities of the neighbourhood, or
- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- [66] With regard to Section 687.3(d)(i)(A), the Board agrees with the appellant that the variance might not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. However, with regard to Section 687.3(d)(i)(B), the Board finds that the proposed Front Yard parking would unduly interfere with the amenities of the neighbourhood.

- [67] This neighbourhood, being part of the 124 Street corridor, is advantaged by an increase in pedestrians and walkable store front displays that are visible to pedestrians and would be harmed by instituting parking in the Front Yard of a business.
- [68] For these reasons, the Board declines to grant the variance in parking.
- [69] The Board finds that the appeal is being allowed because but for condition No. 10, as instituted by the Board, the proposed development becomes one of a Permitted Use with no variances, and therefore, should be allowed.



for

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

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. S. McCartney; Mr. D. Fleming

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Kennedy / Mr. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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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*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: March 27, 2019
Project Number: 292479452-001 /
292479452-002
File Number: SDAB-D-19-034 / 035

Notice of Decision

- [1] On March 13, 2019, the Subdivision and Development Appeal Board (the “Board”) heard two appeals filed on **February 14, 2019 together**. The appeals concerned two Orders dealing with two abutting Lots issued by the Development Authority on January 24, 2019, to:

Acquire a Development Permit for Lodging House (Congregate Living) before March 15, 2019 or decommission the Lodging House (Congregate Living) before March 15, 2019.

- [2] The first subject property is on Plan 1822556 Blk 11 Lot 2F, located at 11233 – 78 Avenue NW. The second subject property is on Plan 1822556 Blk 11 Lot 1F, located at 11235 - 78 Avenue NW. The lots are within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Stop Order with attachments;
 - The Development Compliance Officer’s written submissions;
 - The Appellant’s written submissions;
 - Two letters in opposition to the proposed development; and
 - One letter in opposition to the property development from the McKernan Community League.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Lease, submitted by the Appellant.
 - Exhibit B – Lease, submitted by the Appellant.
 - Exhibit C – Written submission read by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chair 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. (“MGA”)

Summary of Hearing*i) Position of the Appellant, Mr. Hunt*

- [8] Mr. Hunt explained to the Board that the property is new and well maintained.
- [9] He noted to the Board that he has received no complaints from neighbouring property owners.
- [10] In his opinion, because notices were sent to property owners, he believed that they now think that the property is being used as a Lodging House.
- [11] A development permit was issued for the two properties on March 20, 2017 based on drawings showing three bedrooms, one guest bedroom, and one library.
- [12] On November 5, 2018, he received a Notice to Enter Property document to inspect the property for secondary suites. It was confirmed on November 29, 2018 that Secondary Suites did not exist.
- [13] When asked, he confirmed that five people were living at each of the properties and was informed that only three unrelated people were allowed. Mr. Hunt agreed to have two tenants vacate the premises.
- [14] During the January 22, 2019 inspection, even though the number of tenants was reduced to three (3), he was told that there appeared to be four (4) tenants in the building.
- [15] One of the tenants confirmed that there were three (3) tenants when the Development Compliance Officer (DCO) asked him how many tenants there were.
- [16] Mr. Hunt offered to the Board that he could provide documentation to confirm how many people were living at the property.

- [17] Mr. Hunt explained to the Board that the Development Compliance Officer (“DCO”) did not accept his offer to remove items from the rooms in order to comply. The Stop Orders were issued along with a fine in the amount of \$1000.
- [18] Mr. Hunt referred to page 5 of the DCO’s written submission, which outlines the events that took place during the inspections and the elements of a Lodging House.
- [19] Mr. Hunt explained that he is a single father of two boys living in a Single Family Dwelling that has six (6) bedrooms, making the point that various rooms look lived in despite there are only three individuals in his personal residence.
- [20] He believed that the same principle applied to the subject sites. The three (3) tenants are students who set up their computer desks in the living room. Each one has a working computer and there is one shared gaming system, which is typical of students.
- [21] The DCO did not provide feedback on that property at 11235 – 78 Avenue where the living room was setup with a computer and furniture typical of a living room. The tenants at this location chose to set up their computers in their bedrooms. As a landlord, he explained to the Board that he cannot dictate how his tenants furnish their space.
- [22] He referred to the DCO’s written submission where the DCO states that there are two full sized fridges at both properties.
- [23] Mr. Hunt stated that at the property at 11233 – 78 Avenue there are two full sized fridges as per the approved plans from October 5, 2017; one on the main floor and one in the basement.
- [24] An additional beverage fridge and small freezer are used on the main floor kitchen of 11233 – 78 Avenue. He noted that this is what his tenants chose to do.
- [25] He provided verbal evidence to the Board that the two rooms in the basement of both properties are empty and the full size fridge and freezer are empty and not being used.
- [26] The property at 11235 – 78 Avenue have the same appliances as the property at 11233.
- [27] The six (6) room house is not full of tenants. Again, he explained to the Board that the houses consist of three (3) tenants occupying bedrooms, 1 guest bedroom, and 2 rooms are empty.
- [28] He referred to Page 7, point 3 of the DCO’s written submission, which states that a verbal and email warning was issued regarding the Lodging House, outlining that contraventions were not remedied by the time of the second inspection. Mr. Hunt stated that this is not accurate because he took the step to reduce the tenants from five (5) to three (3) as requested.

- [29] He referred to Page 7, point 4 of the DCO's written submission, which noted that the bedrooms were being used. Mr. Hunt stated that he cannot dictate how his tenants use the rooms.
- [30] He referred to Page 7, point 5, of the DCO's written submission regarding land use impacts associated with a Lodging House. Mr. Hunt stated that there are only three (3) tenants and the house is not being used as a Lodging House.
- [31] Mr. Hunt referred to Page 9 of the DCO's written submission, the Definitions/Applicable Regulations for a Lodging House. Mr. Hunt reiterated that the property is not being used as a Lodging House as there are only three (3) sleeping units occupied, three (3) tenants in the building, and only three (3) tenants paying per lease, meeting the definition.
- [32] He referred to Page 22 of the DCO's written submission and stated that Mr. Hunt believed he has complied with Stop Order Section 645(1) and cannot do anything further.
- [33] He reiterated that he has received no complaints regarding the two properties. In his opinion, complaints were received only after notices were sent to property owners from the SDAB Office.
- [34] Mr. Hunt provided the following information in response to questions by the Board:
- a. An inspection was done in December 2018 and any extra tenants had moved out by December 31, 2018.
 - b. He has decommissioned the property as a potential Lodging House.
 - c. He provided the Board with two leases for the subject properties (Exhibit A and B).
 - d. The plans referred to in the DCO's written submission are not the current plans as they do not show the basement plans.
 - e. He reiterated that he cannot dictate how his tenants use the rooms in the house.
 - f. He confirmed that there is one lease for each property. He has reduced the number of tenants from five (5) to three (3). The leases are listed as joint tenants. There is not one person listed as the main contact on the lease.
 - g. He confirmed that there are six rooms in the house with three tenants per subject site. The approved drawings show a master bedroom, three (3) bedrooms, a library, and an office. In his opinion, the library does not need to be used as a library and can be used as a bedroom.
 - h. Three rooms are occupied by tenants; one is being used as a computer room, and two are empty.

- i. The tenants are aware of what their obligations are within the terms of the lease.
 - j. He referred to Page 166 of the DCO's written submission, which showed the advertisement for the basement room. Mr. Hunt stated that the room was not advertised by him but possibly a tenant that was planning to move before the lease was up.
 - k. He confirmed that there is one lease for each address. He could not provide the Board with the old leases.
 - l. There are three (3) tenants on each side of the property. The other 2 people living at the site had a separate lease.
- ii) *Position of the Development Compliance Officer, Mr. Poitras, who was accompanied by Ms. Lamont*
- [35] Mr. Poitras explained to the Board that the investigation that he conducted was in relation to the Use and development of a Lodging House without a development permit for each side of the semi-detached dwelling.
- [36] The land title showed that Mr. Hunt owns both of the properties.
- [37] The subject Site is within the McKernan Neighbourhood and two blocks east of the McKernan/Belgravia LRT Station. The semi-detached house is on the south side of 78 Avenue between 112 and 113 Street. The University of Alberta is north of the subject property and within 10 minutes walking distance.
- [38] Mr. Poitras read Section 7.3(6) of the *Edmonton Zoning Bylaw* that states:
- Lodging Houses** means a building or part of building, used for *Congregate Living*, containing *Sleeping Units* and **four or more persons**, and where there is no provision of on-site care, treatment or professional services of a physical or mental health nature. This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Group Homes, and Limited Group Homes.
- [39] He reviewed the timelines of the investigation with the Board.
- [40] On September 12, 2018, a referral was made about two basement developments set up as Secondary Suites.
- [41] On November 5, 2018, a Notice to Enter the Property was mailed out to both addresses for an inspection on November 29, 2018.

- [42] On November 29, 2018, the property was inspected and determined that no Secondary Suites were identified at the time of inspection as both cooking facilities and key-locked separation were not present at the time of inspection.
- [43] At that time, however, Mr. Poitras noted that Lodging House Uses were identified at the time of inspection at both properties. Inspection results were that four (4) bedrooms containing personal effects, belongings, and full closets were identified at both properties; minimal furnishing in the living room at 11233 were identified; also at 11233 there were four (4) individual computer desks set up and no other furniture; two (2) full sized fridges at both properties and an additional mini fridge and freezer in main floor kitchen of 11233. After the inspection, Mr. Poitras issued Mr. Hunt a verbal warning that the Lodging House use was a contravention.
- [44] On January 22, 2019, the property was inspected for a second time and again found that Lodging House Uses were identified at the time of inspection at both properties. The inspection found four (4) bedrooms containing personal effects, belongings, and full closets were identified at both properties. There was minimal furnishing in the living room at 11233 and identified with four (4) individual computer desks set up and no other furniture; two (2) full sized fridges at both properties; and an additional mini fridge and freezer on the main floor kitchen of 11233. The basement rooms were empty.
- [45] A Violation Ticket was issued to Mr. Hunt for the unpermitted development (*Edmonton Zoning Bylaw* Section 23.1(2)(c))
- [46] Mr. Poitras noted that for the property at 11233, inspection photographs showed four (4) separate computer desks in the living room at 11233, which to him appeared to be in use by four (4) separate individuals. He stated that an unfurnished living room is typical of a Lodging House.
- [47] He referred to the photographs submitted in his written submission showing the computer tables; the unfurnished living room; and the occupied bedrooms with personal items.
- [48] It was his finding that because of the above, the use of the building is that of a Lodging House with shared facilities on the main floor and basement; two full size fridges; a freezer; and a mini fridge. This is not typical of one household.
- [49] Mr. Poitras noted that for the property at 11235, inspection photographs showed two occupied bedrooms on the third floor, two occupied bedrooms on the second floor and shared facilities on the main floor and basement.
- [50] There are significant impacts with the operation of a Lodging House and this Use is not permitted without a development permit.
- [51] A Lodging House is a Discretionary Use in the (RF3) Small Scale Infill Development Zone.

[52] Mr. Poitras provided the following information in response to questions by the Board:

- a. The photographs are not current and were used to determine the Use. The shared facility has not changed and he felt there was no need to update the photographs.
- b. He could not confirm if the photograph, which showed the second floor bedroom, at the property at 11233 is occupied, though it did have belongings in it.
- c. He agreed that if the Appellant has reduced the number of tenants in the building, it now complies with the regulations of the *Edmonton Zoning Bylaw*.
- d. He agreed that a guest bedroom could be in a Lodging House. However, on January 22, 2019, he thought it appeared that the four (4) bedrooms were occupied by individuals on a full time basis. In his opinion, just because a room does not look occupied does not mean it is not, in fact, occupied.
- e. He confirmed that there were four (4) computer tables in the living room that were being used as there were personal items on the tables.

iii) Position of Mr. Gokce, affected Property Owner in opposition

[53] He has lived in the area for four years and lives within a 60 metre radius of the subject Site, establishing how he is an affected party.

[54] He is opposed to the Use of a Lodging House in the neighbourhood.

[55] There are several rental properties in the neighbourhood that are occupied by students as the neighbourhood is in close proximity to the University of Alberta.

[56] He has seen several parties in the area with students living in the neighbourhood and there is always litter on the streets.

[57] He would like to see more families living in the area and not students or Lodging Houses.

iv) Rebuttal of the Appellant, Mr. Hunt

[58] Mr. Hunt noted to the Board that the bar area in the basement was approved by the City. The cooking facilities are not being used.

[59] He reiterated that the plans submitted are not the current plans as they do not show the bar area in the basement.

- [60] He noted to the Board that it is difficult to determine if a guest bedroom is being used by a tenant from an outside perspective but maintained that there is only three (3) individuals, not four (4), living in either residence.
- [61] He explained to the Board that further inspections will not change what the current situation is regarding tenants living at the properties.
- [62] In his opinion, he has done everything to comply with the regulations of the *Edmonton Zoning Bylaw*.
- [63] Mr. Hunt provided the following information in response to questions by the Board:
- a. In his opinion, building inspections and heating inspection with the City may have a policy to flag properties that could potentially be used as rental properties with secondary suites.
 - b. He does not believe the inspections were due to a complaint.
 - c. Two (2) of the lease agreements were terminated and those additional tenants moved on November 29, 2018 and December 31, 2018 out of the properties.
 - d. With regard to the advertisement for the basement suite, he did not advertise the space and he is of the opinion that a tenant may have tried to lease the basement suite without his knowledge. The lease states a sublease has to be approved by the landlord.
 - e. He confirmed to the Board that a potential fourth tenant was not due to a sublease and he is unaware of anyone other than the three (3) people who have signed a lease with him living in either property.
 - f. In his opinion, the Lodging House has been decommissioned and the Stop Order should be over turned for both properties.
 - g. There have been several inspections to the property and nothing has changed. He feels the inspections are impacting the tenants.

Decision

- [64] The appeal is **DENIED** and the decision of the Development Compliance Officer is **CONFIRMED**. The Stop Order is **UPHELD** as issued for the property at 11233 – 78 Avenue (**SDAB-D-19-034**).
- [65] The appeal is **ALLOWED** and the decision of the Development Compliance Officer is **OVERTURNED** for the property at 11235 – 78 Avenue (**SDAB-D-19-035**).

Reasons for Decision

- [66] The issue before the Board is whether or not each side of the Semi-detached dwelling of the subject properties were being used as a Lodging House at the time the Stop Orders were issued.
- [67] The Appellant acknowledged that prior to December 2018, both sides of the subject Site were being used as a Lodging House containing five (5) tenants at each property.
- [68] However, in the evidence submitted by the Appellant, he assured the Board that two (2) of the tenants moved from each property in December 2018, rendering compliance with the *Edmonton Zoning Bylaw*.
- [69] It was not disputed by the Appellant or the Development Compliance Officer that three (3) non-related individuals can live on each side of the semi-detached dwelling.
- [70] Now, specifically before the Board is the issue of whether or not on January 24, 2019 there were four (4) or more non-related individuals living on each side of the semi-detached dwelling.

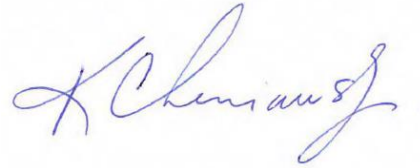
11233 – 789 Avenue NW

- [71] The Board accepts the evidence submitted by the Development Compliance Officer that there were at least four (4) people living at 11233 – 78 Avenue.
- [72] Based on the photographic evidence, four (4) bedrooms all appeared to be occupied as the rooms contained clothes in each closet and personal effects in each bedroom.
- [73] In addition, based on the photographic evidence, the living room was not furnished as one would expect in a traditional house. The living room was converted into a study hall with four (4) separate desks, each containing a separate computer work station and each with personal effects.
- [74] The Board accepts the evidence submitted that the conversion of the living room to a study hall with four (4) work stations is determinative of the fact that it is more likely than not that four (4) people are living at the property at 11233 – 78 Avenue.
- [75] As a result, the Board finds that the Stop Order was accurately issued and the appeal is denied.

11235 – 78 Avenue NW

- [76] With regard to the property at 11235 - 78 Avenue, the Board finds that the Development Compliance Officer has not provided enough evidence to convince the Board that four (4) people are living on that side of the semi-detached dwelling.

- [77] The sole evidence presented with the existence of four (4) bedrooms that each contained a bed. There were fewer personal effects in the photographs in the bedrooms at 11235 – 78 Avenue than 11233 – 78 Avenue.
- [78] The photographs submitted by the Development Compliance Officer do not contain any current photographs of the living room from the January 22, 2019 inspection. The Appellant provided evidence that the living room is furnished as a traditional Single Family Dwelling.
- [79] No evidence was presented to the Board by tenants or the Development Compliance Officer other than the existence of four (4) occupied bedrooms for this address. That evidence is equally consistent with the Appellant's assertion that only three (3) occupants live at 11235 - 78 Avenue and the fourth bedroom is used as a guest bedroom/game room.
- [80] For the above reasons, the Board grants the appeal with regard to the Stop Order issued for the property at 11235 - 78 Avenue. The Stop Order is overturned.



for

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

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. McCartney; Mr. D. Fleming

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Poitras / Ms. Lamont

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.