



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 5, 2018
Project Number: 270048602-001
File Number: SDAB-D-18-042

Notice of Decision

- [1] On March 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 27, 2018**. The appeal concerned the decision of the Development Authority, issued on February 14, 2018, to refuse the following development:

Install (1) Minor Digital On-premises Freestanding Sign (Ellwood Medical Centre).

- [2] The subject property is on Plan 1125270 Blk 1 Lot 13, located at 620 - 91 Street SW, within the (EIB) Ellerslie Industrial Business Zone. The Ellerslie Industrial Special Area and Ellerslie Area Structure Plan apply 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 refused Development Permit;
 - The Development Officer’s written submission and response from Subdivision Planning; and
 - The Appellant’s supporting materials.

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, H. Hans, the property owner and landlord and accompanied by his agent, N. Collins of National Neon Displays*

[7] They are willing to make some concessions to address the concerns of the Development Officer regarding excess light emission and a potential negative effect on the residential area to the east.

- a) The light emitted from the sign can be reduced and can match the brightness of the surrounding street lights and other lit signs.
- b) The message duration interval can be extended from six seconds to 12 seconds to make the sign appear more like a static sign.
- c) The sign copy can be shut off between 11:00 p.m. and 6:00 a.m. to avoid disturbing the residential area.

[8] Mr. Collins provided the following responses to questions from the Board:

- a) He does not know the separation distances between the proposed sign and the existing gas station and credit union signs.
- b) The proposed sign will be brighter than the gas station sign.
- c) The proposed sign will replace some of the existing temporary signs, thereby reducing clutter.

- ii) *Position of the Development Authority, K. Mercier*

[9] The Development Authority provided a written submission and did not attend the hearing.

Decision

[10] 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 Development Permit is valid from **April 5, 2018 to April 5, 2023**.
2. The proposed Minor Digital Off-premises Signs shall comply in accordance to the approved plans submitted.

3. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada. (Reference Section 59.2(5)(a))
4. Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada. (Reference Section 59.2(5)(b))
5. Minor Digital Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(8))
6. All Freestanding Signs, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12))
7. The following conditions, in consultation with the Transportation Department (City Operations), shall apply to the proposed Minor Digital Off-premises Sign, in accordance to Section 59.2(11):
 - a. That, should at any time, City Operations determines that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, deenergizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to City Operations.
 - b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
 - c. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

1. Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, City Operations will require a safety review of the sign prior to responding to the application.

[11] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required (east) Setback of 6.0 metres per section 930.4(4)(3) is varied to allow a deficiency of 4.22 metres, thereby allowing an (east) Setback of 1.78 metres.

Reasons for Decision

[12] A Minor Digital On-premises Sign is a Discretionary Use in the (EIB) Ellerslie Industrial Business Zone.

[13] The Board has concluded that given this is an Industrial Business Zone and that Signage is a common feature within this Zone that this Sign is reasonably compatible in this location 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 for the following reasons:

- a. Based on photographic evidence, the Board finds that other Freestanding Signs to the north and south of the proposed Sign location are similarly located along 91 Street.
- b. Despite notification being sent to the affected neighbours to the east and across 91 Street there was no one who appeared to oppose this application nor were there any letters of opposition received.
- c. The Board, in reviewing the proposed renderings, has determined the Sign is of high quality and well designed.
- d. The Digital component of the Sign is a smaller component of the overall Sign structure and most of the Copy relates to On-premises tenants and is non-Digital in nature. The Board notes that the non-Digital portion of the Sign is a Permitted Use.
- e. In granting the variance for the required (east) Setback, the Board notes that there is a landscaped boulevard and sidewalk between the curb line of 91 Street and the (east) lot line of the subject Site. This added spacing helps mitigate the variance granted.
- f. The Board accepts the presentation of the Appellant that the installation of this Sign would eliminate some of the existing Temporary Signs that have been used by the tenants and the property owner in the past. This reduction will mitigate the existing proliferation of Temporary Signs.
- g. The Sign faces north and south and is not directly pointed in the direction of the residential neighbourhood to the east.

[14] For all of the above reasons, the Board is of the opinion 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.

V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

B. Gibson; L. Gibson; R. Handa; I. O'Donnell

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: April 5, 2018
Project Number: 267427900-001
File Number: SDAB-D-18-043

Notice of Decision

- [1] On March 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 23, 2018**. The appeal concerned the decision of the Development Authority, issued on February 8, 2018, to refuse the following development:

Operate a Major Home Based Business (Inventing / Creating metal works - Area 51 Metalworks).

- [2] The subject property is on Plan 5080HW Blk 15 Lot 27, located at 11508 - 140 Street 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, the refused Development Permit, and e-mail correspondence;
 - The Development Officer’s written submissions and two attachments;
 - The Appellant’s written submissions;
 - Letter of opposition from Woodcroft Community League; and
 - Two on-line responses in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A map showing results of community consultation submitted by the Appellant; and
 - Exhibit B – A video and audio recording of noise regarding the proposed development submitted by 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.

Summary of Hearing

i) Position of the Appellant, S. Johnson

- [8] Mr. Johnson inherited his house and has lived there since 1975. He enjoys doing various projects in his spare time, which sometimes generate noise not related to his business activities. The noise is no different than what is generated from other properties in the area such as barking dogs, children playing, snow and leaf blowing, and chopping wood. He has never had a noise complaint lodged against him.
- [9] In his opinion, the current refusal is based partly on the City's issues with his past business. He has received little information or help from the City to successfully transition the proposed development into the neighbourhood and the business has received zero sales to date.
- [10] He is trying to do everything legally and applied for the required permits in early November. As a result, two City officers inspected the garage and took photos. These officers left him with the impression that the amount of noise being generated from the business was minimal; yet the Development Officer's written submission completely contradicts this.
- [11] He has been a welder for approximately 10 years and works elsewhere when jobs are available. He hopes that this proposed business will help him transition from his welding career. All business related work is done entirely inside the garage and he has taken all possible steps to create zero impact on any of the neighbours.
- [12] He recently installed insulated steel overhead garage doors out of respect for his neighbours. He will also be installing new man doors this week which seal more tightly.
- [13] A noise level of 85 decibels is allowed on residential properties. He presented video evidence, marked *Exhibit B*, to show that the decibel level outside the garage is only 60 decibels when welding or buffing is occurring inside his garage. His hot tub, birds chirping and someone walking down the alley are more audible than the noise coming from his business activities.
- [14] All of the steel he uses is outsourced and pre-cut to eliminate noise.
- [15] While the smoke coming from the welding process is minimal, he has installed a filtration system within the garage to filter out any smoke and dust. The air that exits his garage is cleaner than the existing air in the Westmount area or that of other areas in the

City. Westmount is adjacent to a commercial/industrial area and winds carry pollution into the neighbourhood.

- [16] Mr. Johnson sent letters to 29 neighbours as well as the Woodcroft Community League to inform them of the appeal and advise them of how his business will be run. He received support from seven or eight property owners and reviewed these responses with the Board. A map was provided highlighting the properties that provided support (*Exhibit A*). He has been checking with his neighbours on an on-going basis to ensure he is not causing any disturbance.
- [17] While two property owners provided on-line responses in opposition he questioned the credibility and accuracy of these comments. One of these responses states he uses a gouging machine, which is false; he does not own any such machine. It is also stated that “many” people walk down the alley. His security cameras show that there are a maximum of six people per day that walk past his garage.
- [18] There is adequate on-site parking as there are four parking spaces on the driveway behind the garage and one inside the garage.
- [19] Mr. Johnson addressed the Development Officer’s reasons for refusal:

Outdoor storage of material or equipment associated with the business

- a) The two trailers stored on the property are registered to him personally although they do have the company name on them because they were built as prototypes. One trailer is stored in the rear yard and the other takes up one of the four available parking spaces behind the garage. Nothing related to the business is stored outside the garage.
- b) The trailers that are for sale are located off-site at Honda Extreme.

The principal character of the building has changed

- a) His motorcycle is stored inside the garage year round and his SUV is also parked inside the garage overnight and on weekends. This is a large double sized garage and there is more than enough room to park a vehicle as well as to operate a shop.

The business would be more appropriate in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area

- a) This is not a high speed production facility and he has only manufactured five trailers to date. He did advertise some trailers on Kijiji and Facebook to test the market but he does not understand how this could be considered “massive commercial advertisements”. This statement gives a false impression of the size and scope of his business.

- b) While he did apply to have one employee work at the business he currently does most of the work himself. As it takes 30 hours to complete one trailer, realistically he can only produce one trailer per week.
- c) He disputes the Development Officer's determination that he is producing "high value" metal products. The trailers sell for approximately \$3,500.00 each. Each trailer would only generate \$1,000.00 in profit and to date he has not sold any.
- d) While he has created a website to show what he may produce in the future, he currently acts as a middle man and purchases through National Trailers. Items are shipped directly to the dealer and modifications are made there.
- e) He provided photographs to show the character of the neighbourhood and to show his business fits in with what other people do on their properties. There are other home based businesses in the area or company vehicles parked outside.

ii) Position of Affected Property Owners in Opposition of the proposed development

- [20] Ms. E. Drzewiecki and Mr. E. Drzewiecki appeared in opposition to the proposed development. They live two lots from the subject site and are representing the neighborhood. They did not receive a copy of the letter that the Appellant distributed to the neighbours and were not aware of the appeal until they received notification from the Board office.
- [21] They reviewed the appeal file and feel that the Appellant is trying to play on the Board's emotions to obtain approval for his business.
- [22] Mr. Drzewiecki feels that some of the information presented by the Appellant is not accurate. While the Appellant claims he never had any issues with Bylaw Enforcement, Mr. Drzewiecki submitted a letter of complaint about eight or nine years ago and as a result, Bylaw Enforcement officers came out to investigate.
- [23] In his opinion, this business would set a precedent for allowing similar businesses to operate in the neighbourhood. They intentionally purchased their home in a mature neighbourhood and do not want to live next to a welding shop. The noise, dirt and odour cannot be eliminated from this type of operation and this is most likely why the Woodcroft Community League opposed the proposed development.
- [24] In their opinion, the Appellant will not keep the doors and windows of the garage closed when working during the summer and this will interfere with their enjoyment of their rear yard.

iii) Position of the Development Authority, E. Lai

[25] The Development Authority provided a written submission and attachments and did not attend the hearing.

iv) Rebuttal of the Appellant, S. Johnson

[26] Mr. Johnson agrees that everyone should be able to enjoy their yard and that is why he has taken extensive measures to operate a silent business. He does not believe anyone has heard any noise since November, 2017 and no one has complained. His videos have demonstrated that the noise can be eliminated.

[27] He may have spoken to a Bylaw Enforcement officer nine years ago about items in his yard but he has never received a ticket or anything in writing regarding noise. He disputes that he has presented any false or skewed information.

[28] While he hopes this business will eventually grow he currently cannot afford to rent a shop in an industrial area.

Decision

[29] 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 Development Permit is valid from April 5, 2018 to April 5, 2023.
2. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
3. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the Dwelling (Section 75.1).
4. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
5. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
6. If there are visits associated with the business the number shall not exceed the number applied for with this application.

7. The site shall not be used as a daily rendezvous for employees or business partners.
8. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).

ADVISEMENT:

The Board accepts that there are two existing trailers on-site that are owned personally by the Appellant. The Board has determined that these personal trailers are not subject to the prohibition provision under section 75.5 that there shall be **no** outdoor business activity, or outdoor storage of material or equipment associated with the Major Home Based Business. The Board notes that at **no time**, can there be more than two registered on-site trailers to anyone living on the premises. The Board finds the two existing trailers serve no business purposes and are not used in any capacity related to the Major Home Based Business.

9. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
10. All commercial and industrial equipment, including but not limited to Bobcats, are not permitted at the site. The equipment shall be stored at an approved storage facility.
11. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site.
12. One or more enclosed or empty non-enclosed trailer with less than 4,600kg gross vehicle weight shall be parked at an approved storage facility.
13. All parking for the Dwelling and Home Based Business must be accommodated on site.
14. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).

Notes:

1. This Development Permit is not for an Automotive and Minor Recreation Vehicle Sales / Rentals use (Section 7.4(5)), Vehicle sales are prohibited from this location
2. All business related vehicles and automotive parts shall be stored at an approved storage facility. The Development Permit may be revoked if any business related vehicles and materials are stored at the residential site.
3. This Development Permit is not a Business License.

Reasons for Decision

- [30] The proposed development, a Major Home Based Business, is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [31] Given this is a Discretionary Use; the Board must be convinced that the proposed development is reasonably compatible with the neighbourhood. The Board made this finding based on the following reasons:
- a. The Board is satisfied that all work related to this business application is confined within the detached Garage.
 - b. The Board is satisfied that there is no outdoor storage or activity associated with the business in anyway and the Appellant agrees with this Edmonton Zoning Bylaw regulation that no outdoor storage or activity is allowed.
 - c. The Board is satisfied that noise and fumes created by this business will be sufficiently contained within the detached Garage.
 - d. The Board was provided with specific decibel calculations of other operating equipment being in close proximity to the detached Garage. The Board notes that the business related activities being conducted inside the Garage had no demonstrable increase in the decibel levels.
 - e. The Board is satisfied that the Appellant continues to use the detached Garage for parking of personal vehicles and the Garage is therefore characteristic of the neighbourhood.
 - f. The Board accepts the evidence provided by the Appellant that there will be no increased vehicular or pedestrian traffic that would have an impact on the neighbourhood and the Board does not support the conclusion of the Development Authority that the proposed development is more suitable for a commercial or industrial location.
 - g. The Board notes that with the number of employees and the scale of the operation and the amount of activity occurring with the business will have a minimal impact on the neighbourhood.
 - h. The Development Authority made a conclusion with respect to “massive” advertising because of an investigation into advertisements being displayed on websites and social media. The Board notes that none of the displayed advertising indicates the location of where the subject trailers are being manufactured. Based on the evidence, the Board finds that once the trailers are completed, they are sent to another location for sale.

- i. The Board received community consultation results by the Appellant and the Board accepts the information provided and that the most affected adjacent neighbours are in support of this business.
- j. The Board acknowledges the statements from the Appellant that which from the Board's perspective clearly indicates that the Appellant understands the limitations of operating a Major Home Based Business in a residential neighbourhood. The Appellant has described this proposed development as a stepping stone for perhaps a larger more intensive business that would be operated in a more appropriate commercial or industrial location once production reaches this level.
- k. The Board further notes that there have been no documented complaints on record since the subject business began operating in November, 2017.

[32] For the above reasons, the Board finds that this Use as applied for meets the test of reasonable compatibility with the neighbourhood.

V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Mr. I. O'Donnell; Mr. R. Handa; Ms. L. Gibson

Important Information for the Applicant/Appellant

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 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
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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.

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