

# **Edmonton Subdivision and Development Appeal Board**

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Date: March 17, 2016  
Project Number: 185622971-001  
File Number: SDAB-D-16-067

## **Notice of Decision**

[1] On March 2, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on February 2, 2016. The appeal concerned the decision of the Development Authority, issued on January 15, 2016, to approve the following development:

To operate a Major Home Based Business (administration office for student painting company - A.L.H. ENTERPRISES).

[2] The subject property is on Plan 2938HW Blk 13 Lot 69, located at 11448 - 71 Avenue NW, within the RF1 Single Detached Residential 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:

- Development Officer's written submission and email correspondence;
- Home Based Business Permit Application and approved development permit; and
- Appellant's photographs.

## **Summary of Hearing**

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### *i) Position of the Appellant, Belgravia Community League*

[6] Belgravia Community League received notice that the Respondent received a development permit for a Minor Home Based Business. The Community League was advised by the Development Officer that the Respondent had, in fact, been approved for a Major Home Based Business; the Development Officer re-issued correct notices to parties within the 60 metres notification radius.

[7] Belgravia Community League is supportive of the Respondent's Minor Home Based Business (but not a Major Home Based Business) because there will be no outdoor storage, no signage, and no traffic flowing in and out of the neighbourhood as a result of the Minor Home Based Business.

[8] The Board advised that a variance is required for outdoor storage for both a Minor Home Based Business and a Major Home Based Business because outdoor storage is not permitted for either type of business. Belgravia Community League understands that outdoor storage is a non-issue for a Minor Home Based Business.

*ii) Position of the Respondent, Ms. A. Henderson*

[9] Ms. Henderson applied for a development permit for a Minor Home Based Business (College Pro Painting), but was refused because she stores ladders associated with the business in the backyard of the subject Site. As a result of the refusal, she applied for a development permit for a Major Home Based Business.

[10] Because of the nature of the business, she wants to change her application back to a Minor Home Based Business, but was unable to do so because the appeal was already in process; she asks the Board to grant a development permit for a Minor Home Based Business.

[11] Ms. Henderson lives in a home with a Secondary Suite, from which she operates the business. She does not know whether or not there is a development permit for the Secondary Suite.

[12] She confirmed there are no employees visiting the subject Site and that she meets clients at their homes. She also confirmed that there are no commercial vehicles associated with the business and that the only vehicle parked at the home is her own personal vehicle, and, as a result, there will be no additional traffic flowing into the neighbourhood.

[13] She has made arrangements to store the ladders off-site until production begins in May 2016, at which time the ladders will be stored at clients' homes.

*iii) Position of the Development Officer, Mr. K. Yeung*

[14] He acknowledged that the original application was for a Minor Home Based Business, which is a Permitted Use in the RF1 Single Detached Residential Zone.

[15] However, because of the outdoor storage of ladders, he required the proposed development to be classed as a Major Home Based Business, which, as a Discretionary Use, requires notification of adjacent property owners.

[16] He confirmed that that does not preclude the potential for the Respondent to obtain a development permit for a Minor Home Based Business.

*iv) Rebuttal of the Appellant*

[17] Belgravia Community League reiterated that they are supportive of the Respondent's Minor Home Based Business.

**Decision**

[18] The appeal is ALLOWED IN PART and the decision of the Development Authority is VARIED. The development is GRANTED as approved by the Development Authority with the following changes:

- i. The development is approved as a Minor Home Based Business (administration office for student painting company – A.L.H. ENTERPRISES).

The development is subject to the following CONDITIONS:

- i. The business owner must live at the site. The business use must be secondary to the residential use of the building and no aspects of the business operations shall be detectable from outside the property. (Section 7.3(8))
- ii. There shall be no exterior signage, display or advertisement other than a business identification plaque or Sign 10.0 x 30.5 cm in size located on the Dwelling. (Section 74(1))
- iii. There shall be no mechanical or electrical equipment used that creates external noise, or visible or audible interference with home electronics equipment in adjacent Dwellings. (Section 74(2))
- iv. The Minor Home Based Business shall not employ any person on-site other than a resident of the Dwelling. (Section 74(3))
- v. There shall be no outdoor business activity, or outdoor storage materials or equipment associated with the business allowed on the Site. Indoor storage shall only be allowed inside the Dwelling. (Section 74(4))
- vi. The Minor Home Based Business shall not change the principal character or external appearance of the Dwelling involved. (Section 74(5))
- vii. The site shall not be used as a daily rendezvous for employees or business partners.

- viii. The site shall not be used by employees or business partners as a parking or storage location.
- ix. No person shall keep in any part of the site any commercial vehicle, loaded or unloaded, of a maximum gross vehicle weight exceeding 4500 kg. (Section 45.1(a))
- x. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
- xi. The business must maintain the privacy and enjoyment of adjacent residences and the characteristics of the neighbourhood.
- xii. This development permit may be cancelled at any time if the Home Based Business as stated in the permit details changes. (Section 17.2)
- xiii. This approval is for a five year period from the date of this decision. This development permit expires on March 17, 2021. Should the business continue to locate at this location, an extension of the development permit must be approved prior to March 17, 2021.

### **Reasons for Decision**

- [19] At the outset of the hearing, the Appellant, Belgravia Community League, indicated they would have no concern about the proposed development if it were changed to a Minor Home Based Business because this would remove the outdoor storage at the Site and would eliminate any business visits associated with the Site.
- [20] The Respondent indicated that she had made arrangements to store ladders associated with the business off-site. She confirmed that she is the only employee associated with the business living at the subject Site. She advised that the only vehicle at the subject Site is her personal vehicle and that the business would not create an increase in traffic to the neighbourhood.
- [21] The Development Officer advised that, given the changes the Respondent indicated would be made, he had no problem approving the proposed development as a Minor Home Based Business.
- [22] The Board notes that a Minor Home Based Business is a Permitted Use in the RF1 Single Detached Residential Zone and that the changes the Respondent indicated would be made would make this Use a Minor Home Based Business without the need for variances.
- [23] Accordingly, the Board finds it is required to grant a development permit for a Minor Home Based Business pursuant to Section 642(1) of the *Municipal Government Act* and

Section 11.2(4) of the *Zoning Bylaw*, with the appropriate conditions to ensure compliance.

Mr. N. Somerville for Mr. M. Young,  
Presiding Officer  
Subdivision and Development Appeal Board

Board Members:  
Noel Somerville  
Cindy Chiasson  
Rick Hachigian  
Kavita Thind

**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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

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

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Date: March 17, 2016  
Project Number: 182511406-001  
File Number: SDAB-D-16-068

## **Notice of Decision**

[1] On March 2, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on February 6, 2016. The appeal concerned the decision of the Development Authority, issued on February 2, 2016, to approve the following development:

To expand a Child Care Services (increase the number of children from 54 to 80).

[2] The subject property is on Plan 2597KS Blk 7 Lot 1, located at 8210 - 142 Street NW, within the US Urban Services Zone.

[3] The following documents were received prior to the hearing:

- Development Permit Application, approved development permit, and plans;
- Development Officer's written submissions;
- 60 metres notification radius map with markings, provided by the Appellant; and
- Photos from the Respondent.

## **Summary of Hearing**

[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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

### *i) Position of the Appellant, Mr. J. Shafir*

[6] Mr. Shafir's office is in a shopping centre located across the street from a school and a Child Care Services business. Mr. Shafir is the landlord for the shopping centre and has received a number of complaints from tenants advising that their clients cannot use the parking lot because of traffic, which he believes is generated from the Child Care Services business.

- [7] Mr. Shafir is concerned that there is a shortage of 36 parking spaces for the business and believes it will increase the use of already limited parking in his shopping centre.
- [8] Traffic congestion occurs, most significantly, in the morning, at noon, and later in the afternoon. The shopping centre tenants' businesses are open from approximately 7am – 8pm, seven days per week (depending on the type of business). Mr. Shafir has seen people parking in the parking lot and walking their children into the Respondent's Child Care Services business.
- [9] Other problems Mr. Shafir has experienced as a result of the increased traffic include difficulty clearing snow from the parking lot, wear and tear on the asphalt, increased litter in the parking lot, and broken windows, the costs of which are borne solely by him. In addition, there was a motor vehicle collision that he attributes to the increased traffic.
- [10] Mr. Shafir has tried to address the congested parking situation by hiring tow-truck drivers to hand out notices advising people that if they are not using the shopping centre, they should not be parking in the parking lot; this attempt was unsuccessful.
- [11] Mr. Shafir referenced the survey submitted by the Respondent about whether or not parents using the parking lot support the Child Care Services Business and whether or not they use the businesses in the shopping centre. He argued that the majority of those surveyed admitted they do not use the shopping centre.
- [12] Mr. Shafir showed the Board a map of the immediate area showing a portion of the lot where the Child Care Services business is located, which he believes could be developed to allow for adequate parking for the business, which would divert parking from his shopping centre. Some years ago, the Edmonton Public School Board made this recommendation, but the development did not occur because of the cost. He believes it would cost approximately \$100,000 and argued that the Child Care Services business would recover the cost in a few months.
- [13] Asked by the Board about the availability of parking on 85 Avenue for parents dropping off children, Mr. Shafir advised that there is only space for seven or eight cars on the street. He also noted that school buses and teachers from the adjacent school park in that space, with the result that the overflow parking ends up in his parking lot.
- [14] The Board pointed out that the expansion of the Child Care Services business would not result in additional traffic to the Child Care Services use or the school because the additional students are already going to the school. Therefore, it may be that the expansion will actually improve the situation at his parking lot because more students will be dropped off earlier and picked up later at times when street parking is less limited. Mr. Shafir disagreed that the traffic burden would be spread out throughout the day and argued that he has seen an increase in traffic over the past five or six years as a result of the Child Care Services business. He admitted that he cannot determine whether the traffic congestion and nuisance in his parking lot is a result of parents dropping students off at the school or at the Child Care Services business.



*ii) Position of the Development Officer, Mr. P. Kowal and Transportation Services, Ms. K. Haromy*

- [15] A parking variance is required for the Respondent's Child Care Services business. The parking requirement (and subsequent variance) is calculated based on the fact that the school requires 40 parking spaces and the Child Care Services business requires 13 parking spaces, for a total of 53 parking spaces.
- [16] They argued that the parking variance is reasonable because there will be no change in the intensity of parking use as a result of the increase in the capacity of the Child Care Services business because the additional students already attend the attached school. They also noted that school sites that were developed in the 1950s and 1960s are designed differently than they are today, which is another factor they considered in granting the variance.
- [17] Asked to comment on the fact that some of Mr. Shafir's tenants' businesses are open at 7am and traffic congestion is heaviest in the shopping centre parking lot in the morning, Ms. Haromy argued that from the perspective of Transportation Services, early morning drop-off and late afternoon pick-up "alleviates the stress on the roadway", which makes it better for the operation of the school.
- [18] Asked by the Board whether the hardship and nuisance faced by Mr. Shafir would change their determination that a variance ought to be granted, they advised the Board that they typically try to address the concerns of both parties prior to granting or refusing a development permit; in this case, Mr. Shafir's concerns were not addressed prior to the variance being granted.

*iii) Position of the Respondent, Ms. S. Violette*

- [19] Ms. Violette's Child Care Services business was given provincial approval for six additional spaces in her child care program. The business has a conditional license for seventy-four children and has been operating that way since September 2015.
- [20] Ms. Violette conceded that there is a congestion problem in the shopping centre parking lot, but argued that it is not caused by parents dropping off children at her Child Care Services business.
- [21] She conducted a survey asking parents to self-report whether they parked in the shopping centre parking lot; most do not.
- [22] She has taken a number of steps to address the parking congestion, including, asking parents not to park in the parking lot, asking the school to post the same advisement on School Zone (a website with information for parents whose children attend the school),

and, on one occasion, when she saw parents parking in the parking lot, she sent out a staff member to ask them not to park there. She has also asked her staff to park down the street, rather than on the street to free up street parking for parents.

- [23] She presented the Board with a number of photographs showing the shopping centre parking lot throughout various times of the day and argued that most of the parents dropping off children at her Child Care Services business park on 85 Avenue where the school buses park. They can park there because they come either before or after the school buses arrive or depart.
- [24] The peak drop-off and pick-up times for her Child Care Services business is between 7:15am – 8:30am, and 4:30pm – 5:15pm. In contrast, parents are asked not to drop off before 8:30am at the school and are required to pick up at 3:30pm or at 2:30pm on Thursday.
- [25] She confirmed that the only children at her business are students at the school. She does not accept children who do not attend the school.

*iv) Rebuttal of the Appellant*

- [26] Mr. Shafir reiterated that he arrives at his office between 7:00am – 7:15am every morning and sees parents parking in his shopping centre parking lot and walking their children over to the Respondent's Child Care Services business.
- [27] Asked whether he has a parking variance for his shopping centre parking lot, Mr. Shafir advised the Board that he does not and it is not required but for the addition of parents parking in it to drop off their children in the Respondent's Child Care Services business.

**Decision**

- [28] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

- [29] Child Care Services is a Permitted Use in the US Urban Services Zone.
- [30] The Appellant outlined the considerable problems he is having which, he believed, resulted from parents of children attending either the school or the Child Care Services business using his parking lot to drop-off or pick-up children before and after school. He acknowledged that he has no way of determining whether the parents doing the dropping-off or picking-up are doing it for the Child Care Services business or the school itself.
- [31] The application before the Board is to expand the space that the Child Care Services business within the school is using. The Board accepts the evidence of the Respondent

- that the only children that attend the Child Care Services Business are students of the school.
- [32] Accordingly, increasing the number of students using the Child Care Services business will not increase the intensity of the Use at the school or affect the number of parents picking-up or dropping-off children.
- [33] The Board accepts the evidence of the Respondent that the parents using her facility drop their children off between 7:15am and 8:30am. At that time, the designated bus parking on 85 Avenue is vacant and many of her parents use that space for dropping off their children. It is not until 8:45am that parents dropping children off for school begin to arrive.
- [34] Parents picking up children from the school arrive at 3:30pm most days. In contrast, parents picking up children from the Child Care Services business arrive between 4:30pm and 5:15pm.
- [35] The Board is of the view that the staggered pick-up and drop-off times at the Child Care Services business will potentially reduce the parking issues experienced by the Appellant because fewer parents will be trying to drop-off or pick-up children at the same time, meaning that more street parking will be available at the time parents are attending at the Child Care Services business.
- [36] For the above reasons, the Board is satisfied that allowing the development with the parking variance will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville for Mr. M. Young,  
Presiding Officer  
Subdivision and Development Appeal Board

Board Members:  
Noel Somerville  
Cindy Chiasson  
Rick Hachigian  
Kavita Thind

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