



**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](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)*

Date: May 17, 2018  
Project Number: 274073139-001  
File Number: SDAB-D-18-062

**Notice of Decision**

- [1] On May 2, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 6, 2018**. The appeal concerned the decision of the Development Authority, issued on March 29, 2018, to refuse the following development:

**Add 1 Dwelling to an existing 17 Dwellings of Apartment Housing (18 Dwellings in total), existing without permits**

- [2] The subject property is on Plan RN52 Blk 4 Lot 54, located at 11930 - 104 Street NW and Plan RN52 Blk 4 Lot 55, located at 11930 - 104 Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay applies 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 submissions; and
  - The Appellant’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Parking Study, 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 (the "*Municipal Government Act*").

### **Summary of Hearing**

*i) Position of the Appellant, Mr. Farajmandi*

[8] Mr. Farajmandi referred to the three reasons for the refused permit.

[9] With regard to the amenity area, the additional dwelling does not have amenity area as it is in the basement area of the building.

[10] The dwellings in the building do not have balconies which will not affect the tenants as they are mostly students. The dwellings are less expensive due to the lack of amenity space.

[11] A parking study was done which showed that there is sufficient parking. There is always parking space available in the parking area.

[12] He has visited the site after hours and there has been no issue parking at the subject Site. On-street parking can be congested but there is always space available.

[13] The NAIT parkade is approximately 300 metres from the subject Site.

[14] The allowable density is 17.4 dwellings and they have 18 dwellings.

[15] The additional dwelling will not negatively impact the neighbours as they are not making any alterations to the building.

[16] The additional dwelling was in existence when they purchased the property in 2006. He was not aware the additional dwelling did not have a permit until they renewed the mortgage.

[17] In response to questions by the Board, the Appellant stated that he was not aware when the additional suite was added.

[18] Ten years ago they would not have checked that the development permits were in place, but they do now. His company is checking to make sure all of his properties have the proper permits.

[19] He provided the Board with a parking study of the subject Site (marked Exhibit A). He stated that the additional unit has an assigned parking space.

[20] He could not confirm if the parking study was provided to the Transportation Services.

- [21] He received a call from the adjacent neighbor to the north who was concerned that the addition would create a sun shadow on his property and provided her with information regarding the details of the proposed development. The neighbour verbally indicated that she did not have an issue with the proposed development.
- [22] He confirmed that the Development Officer sent community consultation to neighbouring property owners prior to making a decision on the proposed development.
- [23] He stated that not all of the Development Officers provide them with the letter that is sent out for community consultation. He could not confirm what information was in the community consultation letter.
- [24] He is agreeable to the conditions suggested in the Development Officer's written report.
- [25] He could not confirm if there is available public amenity space in other areas of the neighbourhood, but could confirm that the submitted photographs showed there is amenity space in the front yard of the subject Site.

*ii) Position of the Development Officer, Mr. Angeles*

- [26] The Development Authority provided written submissions and did not attend the hearing.

**Decision**

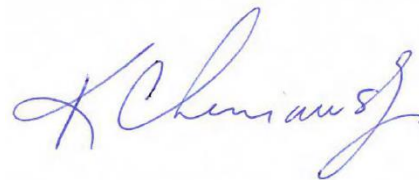
- [27] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITION**:
1. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$1,163.00. The SSTC charge is quoted at year 2018 rate. Please contact Private Development, Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor, Edmonton Tower, 10111 104 Avenue NW, Edmonton AB T5J 0J4.
- [28] In granting the development the following variances to the Edmonton Zoning Bylaw are allowed:
1. The excess in the maximum number of allowable Dwellings of 125 Dwellings/hectare as per Section 210.4(2) is varied to allow an excess of 4.12 Dwellings/hectare thereby increasing the maximum allowed number of Dwellings from 17.4 Dwellings to 18 Dwellings.

2. The minimum required Amenity Area for the additional Dwelling unit, as per Section 210.4(10), Section 210.4(11) and Section 46, is waived.
3. The minimum required Parking Spaces of 21, as per Section 54.2, Schedule 1(A), is varied to allow a deficiency of 2 parking spaces, thereby decreasing the minimum required to 19 parking spaces.

### **Reasons for Decision**

- [29] The proposed development is to add 1 Dwelling to an existing 17 Dwellings of Apartment Housing (18 Dwellings in total). Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone.
- [30] The Development Officer provided a written report outlining the three required variances. He did not have the authority to grant a variance in Density per Section 11.4.1.b of the *Edmonton Zoning Bylaw* and therefore refused the proposed development.
- [31] The Board finds that the three variances are interrelated and grants them for the following reasons.
- [32] Based on the evidence provided by the Development Officer, the subject Site was approved as Apartment Housing for 17 Dwellings on July 20, 1967. Despite the fact that the Apartment House was approved for 17 units, there is evidence that an additional unit was likely a conversion of a storage area which has been in existence for several years and predates the purchase of the property in 2006. There have been no known complaints during this time period from neighbouring property owners regarding the parking on the subject Site.
- [33] No exterior changes to the building are proposed.
- [34] The Board received evidence of community support. The Development Officer's written report indicates, and the Appellant confirmed, that a form of Community Consultation was conducted and that the neighbours were all "in support". The Appellant also contacted the owner of an adjacent Single Detached House and confirmed that they did not have a concern with the proposed development.
- [35] The Appellant provided the Board with a Parking Study conducted over a four day period including week days and weekends which showed ample available on-site parking. The number of occupied parking spaces varied from 7 to a maximum of 12 at any given time (Exhibit A).
- [36] Further, the Board finds that the subject Site is well serviced by public transportation on 118 Avenue and notes that the Appellant confirmed that several of the residents are students and do not have a vehicle given that the building is in close proximity to NAIT and public transportation on 118 Avenue.

- [37] The Board finds that the lack of Amenity Area for the additional Dwelling would impact the residents of the subject dwelling rather than the neighbouring property owners. Further, the Board finds that the lack of Amenity Area specific to this additional Dwelling is ameliorated by the green space in the front yard as shown in the Site Plan that was provided to the Board.
- [38] Based on the above, it is the opinion of the Board 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.
- [39] The condition suggested by the Development Officer was reviewed with the Appellant who was in agreement to the condition.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. G. Harris; Mr. L. Pratt; Mr. J. Wall

**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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## **SDAB-D-18-063**

### **Application No. 272407752-001**

An appeal to operate a Professional, Financial and Office Support Service Use, and to construct exterior and interior alterations (McMan Youth Family & Community Services), located at 10949 - 120 Street NW, was **WITHDRAWN**.