

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
May 18, 2017**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I	9:00 A.M.	SDAB-D-17-089	Convert a Single Detached House to a Lodging House (maximum of 4 Sleeping Units; maximum of 6 residents) 10925 - 81 Avenue NW Project No.: 228214332-002
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NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-17-089

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN
ADJACENT PROPERTY OWNER

APPELLANT 1:

APPELLANT 2

APPLICATION NO.: 228214332-002

APPLICATION TO: Convert a Single Detached House to a
Lodging House (maximum of 4 Sleeping
Units; maximum of 6 residents)

DECISION OF THE
DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: April 5, 2017

DATE OF APPEAL (APPELLANT 1): April 24, 2017

DATE OF APPEAL (APPELLANT 2): April 25, 2017

NOTIFICATION PERIOD: Apr 11, 2017 through Apr 25, 2017
(Reference page 2 of 3 from permit)

RESPONDENT:

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 10925 - 81 Avenue NW

LEGAL DESCRIPTION: Plan I23 Blk 141 Lot 29

ZONE: RF3 Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: Garneau Area Redevelopment Plan

Grounds for Appeal

The Appellants provided the following reasons for appealing the decision of the Development Authority:

Kathy Bruce-Kavanagh (Appellant 1):

1. The location of this house is part of the Garneau Area Redevelopment Plan Sub-area 1 and the development permit does not conform to Policy G.1 and Policy Number 1.2 of GARP - Land Use – Residential – that Council encourages the development of family oriented housing in RF3 Zones
2. Site Area –The variance provided by the Development Office reduces the site area requirement for lodging house by 50% and is excessive. The spirit and intent of variances is to make minor adjustments in zoning, not fundamentally change the regulations for the Zoning Bylaw. This variance will fundamentally change the regulations for Lodging Houses.

Zoning bylaw Section 140.4.25 states for Lodging Houses, the following regulations shall apply:

- a) *no more than four Sleeping Units may be developed, whether or not in combination with a Dwelling;*
- b) *the minimum Site area shall be 360 m2 in all cases and the Site shall be comprised of the aggregate of 200 m2 for each Sleeping Unit, or for each of the Dwelling and each Sleeping Unit when they are in combination; and*
- c) *the Development Officer shall exercise discretion with respect to the number of Sleeping Units developed, having regard to the character and density of existing Residential Uses*

Section 140.4.25 c clearly states that the Development Officer's discretion is with respect to the number of sleeping Units not the Site Area and in addition, this discretion should be exercised with respect to the existing residential uses, i.e. family oriented housing.

Background

- Fall of 2015 - Construction was ongoing at this address. – Neighbours asked the contractor about a development permit for the work.
- February 2016 Mr. Ken Chen applied for a Minor Development Permit – Ref: 187083319-001 to construct interior alteration to an existing Single Detached House, Basement development (not to be used as an additional Dwelling).
- Mr. Chen proceeded to build 10 ensuite bedrooms and put the house up for sale.

- An open house participant noted that some of the 10 bedrooms did not have windows or the windows were not up to code, no sprinkler systems or the required egress in case of fire.
- Current owners – advertised the 10 bedrooms on an Internet Room Rental site (attached).
- The house was occupied by 10 renters.
- In 2016/2017 a complaint was filed with the City of Edmonton – this house was zoned as a single-family dwelling – RF3
- This resulted in the current owners applying for the current permit.

I request that the Sub Division Appeal Board support the Appeal for the following reasons

- 1. The Development does not conform to Sub-area 1 of the Garneau Area Redevelopment Plan regarding family oriented housing – RF3 Schedule Q.**
- 2. The Development Officer does not have discretion with respect to the size of the Site Area and did not follow the regulations with respect to the existing residential character.**
- 3. The electrical and plumbing renovations of this house have not been inspected or approved and may be detrimental to the safety of any occupant.**

Mary Jane Dawson (Appellant No. 2):

We want the zoning for this building to remain as a single family dwelling instead of a lodging house because:

- The location of this house is part of the Garneau Area Redevelopment Plan Sub-area 1 and the development permit does not conform to Policy G.1 and Policy Number 1.2 of GARP - Land Use — Residential — that Council encourages the development of family oriented housing in RF3 Zones rather than lodging houses.
- The interior renovation done by previous owner was authorized by a minor development permit (Reference ID # Job No 187083319-001) which was obtained by the owner only after we complained to the owner about the lack of a permit and substantial completion of the renovation had already occurred. The permit authorized development only to "construct interior alteration to an existing single detached house, basement development (NOT to be used as an additional dwelling)". The renovation done resulted however in increasing the home to 10 ensuite bedrooms (3- 2nd floor, 3- main floor and 4 in basement along with a basement kitchenette) **clearly not in compliance with the original permit.**

- The current owner has rented out the houses as a lodging house with 10 bedrooms and only applied to have the zoning changed after a complaint was made.
- The current configuration is not in compliance with the RF3 discretionary lodging house use of 4 sleeping units. Unless significant renovation was done to remove the surplus ensuites, it is more likely that the new permit limiting to rental of 4 sleeping spaces will not be met and constant enforcement action by the City will be required.
- **The zoning bylaw does not provide authority for the development officer to vary the site area as proposed by the new development permit.**

Zoning bylaw Section 140.4.25 *states* for Lodging Houses, the following regulations shall apply:

- a) no more than four Sleeping Units may be developed, whether or not in combination with a Dwelling;*
- b) the minimum Site area shall be 360 m² in all cases **and the Site shall be comprised of the aggregate of 200 m² for each Sleeping Unit, or for each of the Dwelling and each Sleeping Unit when they are in combination; and***
- c) the Development Officer shall exercise discretion with respect to the number of Sleeping Units developed, having regard to the character and density of existing Residential Uses*

Section 140.4.25 c clearly states that the Development Officer's discretion is with respect to the number of sleeping Units not the Site Area and in addition, this discretion should be exercised with respect to the existing residential uses, i.e. family oriented housing.

- The site area variance provided by the Development Office reduces the site area requirement for lodging house is excessive. The proposed variance would reduce the required site area from 800m² to 404m². The spirit and intent of variances is to make minor adjustments in zoning. This variance will fundamentally change the regulations for Lodging Houses. The site area requirement is provided for a reason in the bylaw. If this variance is allowed, it will become a precedent for other properties in Garneau. This will lead to a fundamental decrease in the quality of life because of the increased density. We have already noticed that with this development and other developments going on the ability for street parking during restricted hours is greatly reduced.
- Given the issues with the original development permit we also have significant doubts that inspections were done to ensure that the property complies fully with building and fire codes for lodging houses ie) window well dimensions, carbon monoxide detectors.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

685(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given *in accordance with the land use bylaw*. [emphasis added]

The *Edmonton Zoning Bylaw 12800* provides as follows:

20. Notification of Issuance of Development Permits

20.2 Class B Development

1. Within seven days of the issuance of a Development Permit for a Class B Discretionary Development, the Development Officer shall dispatch a written notice by ordinary mail to all relevant parties listed below that are wholly or partially within 60.0 m of the boundaries of the Site which is the subject of the Development Permit:

- a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land;
 - c. the President of each Community League; and
 - d. the President of each Business Revitalization Zone.
2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.
 3. Within 10 days of the issuance of a Development Permit for Class B Discretionary Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating their decision, and the right to appeal therefrom.
 4. Where, in the opinion of the Development Officer, a proposed development is likely to affect other owners of land beyond 60.0 m, the Development Officer shall notify owners of land at such additional distance and direction from the Site as, in the opinion of the Development Officer, may experience any impact attributable to the development.

The decision of the Development Officer is dated April 5, 2017. Notice of the development was published in the Edmonton Journal on April 11, 2017. The Notice of Appeal was filed by Appellant 1 on April 24, 2017, and by Appellant 2 on April 25, 2017.

Determining an Appeal

The *Municipal Government Act* states the following:

Hearing and decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(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,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Section 140.1 states that the **General Purpose** of the **RF3 Small Scale Infill Development Zone** is:

... to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions.

Under Section 140.3(1), **Lodging Houses are a Discretionary Use** in the RF3 Small Scale Infill Development Zone.

Section 7.3(6) 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.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

...to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants

and neighbouring affected parties when a development proposes to vary the Overlay regulations.

Site Area

The Development Officer noted that Lodging Houses are a Discretionary Use in the RF3 Small Scale Infill Development Zone.

Section 140.4(25) states:

25. For Lodging Houses, the following regulations shall apply:
 - a. no more than four Sleeping Units may be developed, whether or not in combination with a Dwelling;
 - b. the minimum Site area shall be 360 m² in all cases and the Site area shall be comprised of the aggregate of 200 m² for each Sleeping Unit, or for each of the Dwelling and each Sleeping Unit when they are in combination; and
 - c. the Development Officer shall exercise discretion with respect to the number of Sleeping Units developed, having regard to the character and density of existing Residential Uses.

Development Officer's Determination

Site Area - The area of the site is 404m² instead of 800m² (Section 140.4.25.b).

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

		Project Number: 228214332-002 Application Date: JAN 06, 2017 Printed: May 10, 2017 at 2:54 PM Page: 1 of 3
Major Development Permit		
This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.		
Applicant 	Property Address(es) and Legal Description(s) 10925 - 81 AVENUE NW Plan I23 Blk 141 Lot 29	
	Specific Address(es) Entryway: 10925 - 81 AVENUE NW Building: 10925 - 81 AVENUE NW	
Scope of Permit To convert a Single Detached House to a Lodging House (maximum of 4 Sleeping Units; maximum of 6 residents).		
Permit Details		
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 404	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	
I/We certify that the above noted details are correct. Applicant signature: _____		
Development Permit Decision Appealed to SDAB		
The permit holder is advised to read the reverse for important information concerning this decision.		



Project Number: 228214332-002
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Major Development Permit

Subject to the Following Conditions

This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21(1). Reference Section 17(1).

This Development Permit authorizes the development of a Lodging House with a maximum of 4 Sleeping Units and a maximum of 6 residents. The development shall be constructed in accordance with the stamped and approved drawings.

All residents will have access to all common rooms / areas and any doors to these rooms will be non-locking.

NOTE: For the purpose of applying the regulation of Section 96 the Development Officer shall maintain a register of all approved Special Residential Facilities. The register shall include the address of the facility, maximum occupancy of the facility, and any other necessary information.

The maximum number of residents is 6 (Reference Section 76.1). Any increase in the number of residents shall require separate development approval.

The maximum number of Sleeping Units is 4 (Reference Section 140.4.25.a). Any increase in the number of Sleeping Units shall require separate development approval.

NOTE: Each bedroom is considered to be a Sleeping Unit, therefore the maximum number of bedrooms is 4.

All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

NOTES:

- 1) Signs require separate Development Applications.
- 2) 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.
- 3) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 4) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Variations

Discretionary Use - A Lodging House is approved as a Discretionary Use (Section 140.3.1).

Site Area - The area of the site is 404m² instead of 800m² (Section 140.4.25.b).

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: Apr 05, 2017 Development Authority: BACON, KIRK

Notice Period Begins: Apr 11, 2017

Ends: Apr 25, 2017

Signature: _____

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: **228214332-002**
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Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$500.00	\$500.00	03847638	Jan 06, 2017
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	\$500.00	<u>\$500.00</u>		

The permit holder is advised to read the reverse for important information concerning this decision.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-089

