



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 17, 2017
Project Number: 164383562-004
File Number: SDAB-D-17-078

Notice of Decision

- [1] On May 3, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on April 10, 2017. The appeal concerned the decision of the Development Authority, issued on March 31, 2017, to refuse the following development:

Operate a Major Home Based Business (Administration office for janitorial business - DIAMOND JANITOR SERVICE).

- [2] The subject property is on NW-8-52-25-4, located at 4059 - 199 Street NW, within the Agricultural Zone. The Edgemount Neighbourhood Area Structure Plan 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.

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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. M. Elossais

- [7] Mr. Elossais was accompanied by Mr. J. Dallin who was acting as a consultant to Mr. Elossais.
- [8] Mr. Elossais has been operating a janitorial business since 1988 out of an office and warehouse in the City. With the downturn in the economy and the loss of a long term contract, he began working out of his home in 2013. Initially, he had a permit for a Minor Home Based Business.
- [9] In June of 2016, he purchased two large commercial trucks as an addition to his business to allow him to transfer janitorial equipment. As a result, he received a request from the City to apply for a Major Home Based Business. He complied with this request, but his application was refused.
- [10] The Development Officer advised him to park the commercial trucks off-site in an authorized rental area, but Mr. Elossais does not feel this should be necessary. His property is very large (8 acres) with only one close neighbour to the south. This neighbour has provided a letter in support of Mr. Elossais' application.
- [11] The current access to the property (199 Street) is only used by himself and the neighbour to the south. 199 Street is blocked beyond the access point to the southerly neighbours' property. Two Google aerial photos contained in his written submission were reviewed to show the Board where his property is located in relation to the major roads in the area. There is a green belt to the east, an empty field to the west, and the neighbour and future residential development to the south.
- [12] 199 Street will eventually be relocated when residential development starts to the west, but construction has not yet begun and approval could take a few years. He is currently in negotiations with the City to buy half of the current road. He pointed out the future route of 199 Street and stated that the City cannot cut off access to his property.
- [13] The Development Officer's conditions of approval were reviewed by the Appellants. Mr. Elossais is in agreement with all of the conditions other than wanting a relaxation to allow the two commercial vehicles to be parked on his property. The vehicles are screened on the west by trees and no one ever drives past the property. They can only be seen from Lessard Road which is about 500 metres away and from the Anthony Henday. He likened his situation to the many people in the City who park gravel trucks on their property overnight.
- [14] The flatbed trailer on his property is used for personal use only and is not associated with the business.
- [15] There is no sign advertising the business nor is there any advertising on the trucks.

- [16] No employees work on the site. One staff member comes to the property to pick up one of the trucks in the morning and returns it in the evening.
- [17] Cleaning supplies are stored at the property inside of the garage.
- [18] He confirmed that seven recreational vehicles are parked on the site but are not related to any business activity. He personally owns three of the recreational vehicles and the others are owned by family members.

ii) Position of the Development Officer, Ms. H.Vanderhoek

- [19] Ms. Vanderhoek answered questions from the Board.
- [20] A person would be permitted to own and park similar vehicles for personal use in an Agricultural Zone. Personal vehicles are not regulated.
- [21] This business was changed from a Minor to a Major Home Based Business because the scale of operation increased.
- [22] Ms. Vanderhoek is not aware if a complaint was received. She is only aware there was an inquiry from a City Councillor.
- [23] There is no issue with the flatbed trailer if it is just for personal use.
- [24] Although one of the vehicles is over 4,600 kilograms, she did not use the weight as a reason for refusal as Section 45 of the *Edmonton Zoning Bylaw* applies to Residential Zones. The subject site is not in a Residential Zone. In this case, the trucks are incompatible with an Agricultural Zone and outdoor storage is not permitted for a Home Based Business.
- [25] The application was not circulated to Transportation for comments as the Development Officer refused the application for the permit.
- [26] She is aware that 199 Street is to be re-located but was not able to confirm the exact route it will follow.
- [27] She believes this agricultural parcel will be re-zoned in the future, but she is aware of no current plan to rezone.

iii) Rebuttal of the Appellant

- [28] Even if Section 45 of the *Edmonton Zoning Bylaw* did apply to the subject site, the larger truck would still be compliant because 5 tons is less than the 4,600 kilograms maximum weight.

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 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)).
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 centimeters (8 inches) x 30.5 centimeters (12 inches) in size located on the dwelling (Section 75.1).
3. 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).
4. The number of non-resident employees or business partners working on-site shall not exceed two at any one time. (Section 75.4).
5. The site shall not be used as a daily rendezvous for employees or business partners.
6. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings (Section 75.5)
7. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
8. Fabrications of business related materials are prohibited.
9. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
10. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on May18, 2022.

[30] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. Section 75.5 of the Edmonton Zoning Bylaw is waived to allow the outdoor storage of a maximum of two commercial vehicles on the site.

Reasons for Decision

- [31] A Major Home Based Business is a Discretionary Use in the AG Agricultural Zone as per Section 610.3(3).
- [32] Large commercial vehicles are not incompatible with the Agricultural Zone's "agricultural and rural uses."
- [33] Having regard for the particular nature of this site which is large, relatively isolated and treed, and having regard for the letter of support from the most affected neighbour, the Board finds that allowing the storage of two commercial vehicles on site 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.
- [34] No one appeared in opposition to the proposed development and no letters of opposition were submitted.
- [35] As noted in the Development Officer's submission, there are future plans for intensification of residential development in this neighbourhood. The Board has imposed a time limit so if any adverse effect arises in relation to this development, the approval can be revisited in five years' time.
- [36] The Development Permit allows for the current intensity of use. Any intensification of Use would require a new permit.
- [37] The Board heard from the Development Officer that the usual prohibition on oversized vehicles in Section 45 does not apply because this is not a Residential Zone.
- [38] The Development Officer confirmed that since the trailer is used for personal use, it is not in contravention of the regulation prohibiting the outdoor storage of equipment associated with a business. (Section 75.5).



Ms. A. Lund, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

Mr. N. Somerville; Mr. A. Peterson; Mr. R. Hachigian; Mr. R Handa

cc: City of Edmonton Sustainable Development – Attn: H. Vanderhoek / A. Wen

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.



Date: May 17, 2017
Project Number: 242488221-001
File Number: SDAB-D-17-075

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on April 13, 2017, made and passed the following motion:

“That the appeal hearing be tabled to Wednesday, May 3.”

- [2] On May 3, 2014, the Board made and passed the following motion:

“That SDAB-D-17-075 be raised from the table.”

- [3] On May 3, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on March 30, 2017. The appeal concerned the decision of the Development Authority, issued on March 22, 2017, to approve the following development:

To construct a two-storey Accessory Building (main floor Garage, 6.1 metres by 9.75 metres, second floor Garage Suite, 6.7 metres by 8.75 metres)

- [4] The subject property is on Plan 6773MC Blk 17 Lot 21, located at 4144 - Aspen Drive East NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [5] 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 approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions and petition;
- Letters of Opposition; and
- One online response of neutral.

- [6] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Appellant’s PowerPoint Submission and related notes

- Exhibit B – Respondent’s Presentation

Preliminary Matters

- [7] 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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellants, Mr. G. Perman and Ms. J. Perman

- [10] Mr. and Mrs. Perman presented a PowerPoint presentation to outline their concerns, marked Exhibit “A”.
- [11] The proposed development is not reasonably compatible with the surrounding developments and will affect their privacy, parking, traffic and the character of the neighbourhood.
- [12] They do not oppose Garage Suites as long as they do not interfere with the use, enjoyment or value of a neighbour’s property.
- [13] Aerial shots of the Aspen Gardens neighbourhood were provided to show that their property is in a valuable location across from Whitemud Ravine Park. They moved to their current home in 2006, renovated it, and improved the yard. Their property is their main asset.
- [14] They love their backyard and enjoy spending time in it after work and on Saturday and Sunday mornings. Right now they can look over the fence, up the slope of the garage and see the sky. An 18 foot structure will result in the loss of sunlight and views of the sky.
- [15] The size and placement of the proposed development (32 feet long by 18 feet high alongside their back fence) will have an overwhelming massing effect. It will be located only 1.5 metres from their 19 by 20 foot backyard amenity area. They presented a photoshopped visual of how the proposed development will appear from their backyard.
- [16] The Appellants presented a photograph of an existing garage suite, built using a shipping container. The suite shown was a one-bedroom suite over a single garage. The Appellants characterized the suite as being quite imposing. The proposed development will be larger, with two bedrooms over a triple car garage. They likened it to a home behind the existing home.

- [17] They have looked at the website showing this style of home made from shipping containers and feel it is appropriate to locations such a rural setting or acreages.
- [18] They communicated their concerns to residents in the area and showed them renderings to illustrate the negative impact the structure would have on their yard. They collected 157 signatures of opposition on a petition, 126 from Aspen Gardens. 19 of 23 homes in the 60 metre notification area oppose the construction of this Garage Suite. They received over 100 phone calls from concerned residents and are aware that letters were sent in to the Board. The opposition they received indicated residents are opposed to this style of development, not infill or Garage Suites that are sensitive to the neighbourhood and the immediate neighbours.
- [19] They believe the proposed development will negatively affect the value, use and enjoyment of their property. They presented the following information in support of this contention:
- Two letters from realtors, both of whom opined that a loss of sunlight in a backyard could impact the value of a property.
 - The sheer size of the proposed structure will affect the enjoyment of their yard. It will restrict light from entering their backyard. The sloped roof on the existing garage allows sunlight to reflect off the snow into their yard. The flat roof on the proposed structure will not allow for this reflection of sunlight into their yard.
 - Although the windows overlooking their yard will be frosted, they can still be opened, allowing for overlook and overheard conversations.
 - The landing at the top of the stairs overlooks their property and the properties across the lane.
 - The air source heat pump mounted on steel supports will be unsightly and noisy and should be located away from windows of adjacent buildings as per the Government of Canada Natural Resources Webpage.
- [20] The proposed development does not meet the purpose of the Mature Neighbourhood Overlay, is not sensitive in scale to existing developments, does not maintain the traditional character and does not ensure privacy and sunlight penetration on adjacent properties:
- All adjacent homes are bungalows with single or double garages. Triple garages are not common in the area. There are 18 bungalows, 4 split levels and 2 two-storey houses within the 60 metre notification area.
 - Photos taken last week depict the sun shadow created by the current garage at various times throughout the morning. A higher structure would create even more shading. They acknowledged that shade is not an issue later in the day.
 - The proposed structure will sit a mere 1.5 metres from the fence.
 - The size of this structure will be jarring. Although it meets the allowed height under the *Edmonton Zoning Bylaw*, this two-storey Garage Suite will look out of scale.
 - There are no structures with entirely flat roofs within the 60 meter notification area.

- Homes in the area are predominantly wood siding or stucco with stone or brick accents. This development will resemble a warehouse or boxcar with the top half being corrugated steel set on a prefabricated concrete base.
- [21] Renderings of the proposed development from all directions were presented to show the negative impact that will be created.
- [22] They are concerned about traffic impacts. Aspen Drive is a busy road and the community mailboxes have increased traffic. The Respondent's home based business already generates extra traffic and a Garage Suite will generate additional traffic. They question if there is even a business licence or a development permit in place for the home based business.
- [23] They feel that the home based business being run out of the Subject Site is relevant to this Appeal, as it contributes to parking and traffic issues. There are often vehicles parked along the front street from business traffic and the garage is full of business items.
- [24] Parking is a concern as the garage has been used for storage of items from rental properties and for repairing vehicles. The use of the third door on the garage is unspecified. Also they question if there is an adequate turning radius for cars to enter and exit the garage, especially given that the parking pad is located close to the doors. A two bedroom Garage Suite could potentially mean three more cars will be parked on the front street.
- [25] They do not agree with the following reasons given by the Development Officer for finding this proposed development compatible:
- Aspen Gardens is a low density area, close to amenities and schools with an opportunity for infill. They do not understand how these characteristics of their neighbourhood justify this type of a development.
 - The flat roof was described as being similar to their roof, but only a portion of their roof over the front and back porches is flat.
 - The Development Officer mentioned that privacy is provided by a large tree; however the builder has indicated that this tree is going to be trimmed back.
- [26] They feel a one bedroom suite over a double garage with a sloping roof would be much better. They are especially concerned with the size of the proposed development. It would also be better if the development were moved to the other side of the yard, where it would primarily impact a neighbouring garage.

ii) Position of Ms. D. Harty, an Affected Property Owner in Support of the Appellant

- [27] Ms. Harty lives within the 60 metre notification zone.
- [28] Her biggest concern is the staircase up to the second floor Garage Suite. People who are living in the Garage Suite will not be able to see who is on staircase but it allows anyone

on it to look directly into neighbouring properties. There have been problems with vagrants in the ravine and it is possible that they will use the staircase to scope out neighbouring properties.

- [29] She is concerned with the size of the proposed development and the potential safety issues it could create.

iii) Position of the Development Officers, Ms. H. Vanderhoek and Mr. G. Robinson

- [30] Ms. Vanderhoek was accompanied by Mr. Robinson; they answered questions from the Board.

- [31] Dwellings made from storage containers are relatively new but there have been several approvals throughout the City. New containers are used for these developments, not refurbished ones.

- [32] The height of the principal dwelling is calculated at 4 metres at the midpoint and the height of the Garage Suite is 5.5 metres, the maximum permitted. The principal dwelling is set back over 24 feet and the actual house has a depth of over 31 feet. For these reasons they do not believe the suite will be visible from the street in front of the main house.

- [33] They have requested frosted windows to mitigate any privacy concerns. The existing landscaping consists of many large trees which helps alleviate massing concerns. The Development Officers also pointed out that the Board has the authority to condition additional landscaping, and suggested that landscaping between the Garage Suite and the Appellants' property might mitigate some of the Appellants' concerns.

- [34] Five existing trees will remain in place; two in the back and three in the front. The five foot setback along the west side of the structure could be planted with a variety of columnar trees or vines should the Board decide to condition additional landscaping to act as a buffer.

- [35] They confirmed that no variances were required to the *Edmonton Zoning Bylaw*, nor the Mature Neighbourhood Overlay.

- [36] Section 87.14 of the *Edmonton Zoning Bylaw* gives Development Officers direction as to things to consider when exercising their discretion. This is an unusual section because generally the *Edmonton Zoning Bylaw* deals only with physical characteristics; this section relates to aesthetic questions and is very subjective. In this case, the Development Officer placed greater emphasis on the hard and fast regulations such as Setback, Height, and Site Coverage. The type of building material being used is currently not common in any residential development but they do not wish to preclude people from being innovative.

- [37] Ms. Vanderhoek felt that privacy issues were addressed by having the large picture windows set far back from property line, obscured by trees and requesting that the overlooking windows be frosted. The property is situated so that the Appellants' property

would have the sun for the majority of the afternoon and the latter part of the day. This is the majority of time that people sit outside.

- [38] The Development Officer referred to section 14.3 of the *Edmonton Zoning Bylaw* giving directions regarding a Sun Shadow Impact Study and advised that no sun shadow impact study had been done.
- [39] A transportation study is not typically requested for such a low density project. The *Edmonton Zoning Bylaw* requirement for three parking stalls is satisfied.
- [40] There is a clause in the *Edmonton Zoning Bylaw* that does not allow a Major Home Based Business and a Garage Suite at the same location. There is no record of any business licence at this property. Any concerns about an unlicensed business operating from the subject site should be brought to the attention of the Bylaw enforcement team.
- [41] The Development Officer is requesting a slight revision to the permit if the Board decides to approve it. The dimensions need to be revised to match the dimensions of the plans submitted by the Respondents, and a demolition permit for the existing accessory building should be included.

iv) Position of the Respondents, D. Engleman of Engleman Construction and Kevin Harder (property owner)

- [42] A sun shadow study was done (marked Exhibit B) using a mix of Google Earth and Google Sketch Up by inputting the latitude and longitude of this exact location from Google Maps. The results show that there is little difference in the shade created by their proposed development versus a one-storey garage with a typical pitched roof. There is no shade impact whatsoever to the northwest neighbour (i.e., the Appellants) during the afternoon and evening. If they were to use a sloping roof, they could build a structure up to 6.5 metres in height. Such a structure would not have less of an impact on shade than the proposed development.
- [43] They are only proposing a site coverage of 9 ½ percent. The maximum allowable site coverage for an accessory building on the subject site is 12 percent, which would allow them to build a quadruple garage. They have also set the development further back from the Appellant's property than required.
- [44] A lot of care has gone into the design and orientation to ensure that the mature trees on the opposite side of the property are kept. They are also using frosted glass and have placed the windows to lessen impacts on privacy.
- [45] They had considered a Garage Suite at grade with the garage next to it but that only left them with 300 square feet for the garage. This would only allow for 1 ½ parking spaces which would likely result in a parking variance being required.
- [46] Mr. Engleman is a builder and realtor and has a similar suite in his own back yard. These types of projects are relatively new in Edmonton but are more common in Seattle,

Portland and Vancouver. Studies in those cities show that Garage Suites increase property values.

- [47] They use a brand of air source heat pump that runs at 60 decibels, which is very quiet.
- [48] Mr. Engleman built a brand new infill last year on Aspen Drive which has corrugated steel siding and another one is to be built this year. Corrugated steel is a modern design feature and very common in infill building. Seven approvals for similar suites have been obtained in other neighbourhoods such as Glenora and Ritchie. This is the first one that has been appealed.
- [49] The third stall is earmarked for the tenant and no parking variance is required.
- [50] The owner explained that the existing garage needed to be replaced so they thought they would look at including a Garage Suite when building a replacement. They hope their child might live there while attending college.
- [51] They looked at a variety of different styles and found the appearance of the one in Mr. Engleman's backyard appealing. Although it is currently not a prevalent style in the neighbourhood, the neighbourhood is comprised of a mixture of housing styles.
- [52] They are willing to modify their project to make it more acceptable to the Appellant, but if they move further back from the Appellant's property line it could mean that some of the existing trees would need to be removed.
- [53] The Respondents would be willing to plant extra trees between the structure and the Appellant's property. They were asked if such trees might have more of a negative sun impact than the structure itself. Mr. Engelman suggested that the Respondents could plant trees, whose maximum height is less than the height of the proposed development.
- [54] The owner had not considered the stairway as being a safety issue. He does agree that vagrants congregate in the ravine, but he has never had any personal problems such as break-ins. Mr. Engleman suggested that if this became a problem a fence with a lockable gate could be installed.
- [55] The neighbours seem to be under the impression that they are operating a home based business. They do run a vending machine business but no one comes to their house in connection with this business. They are currently storing some equipment in the garage due to the economic slowdown. They do run an Amway business but orders are filled on-line and get delivered to their clients' doors. No clients come to the house. He does not believe there is a requirement for licences to run these types of businesses.
- [56] They are aware of the letters and petition of opposition but feel that many of the opponents do not fully understand what the project entails. The suite will consist of four pieces and will be assembled in one day. The outside of the shipping container is meticulously cleaned and finished with industrial enamel paint. It will be placed on a precast concrete foundation.

v) *Rebuttal of the Appellants*

- [57] They feel the Garage Suite will be visible from the front street; perhaps not directly in front of the Respondent's home but from an angle.
- [58] The Development Officer is not familiar with the area as she just drove down the front street and the back lane. They questioned how can she assess what is compatible with the surrounding area based on this cursory visit.
- [59] They acknowledge that the windows facing their property will be frosted but they will still open, allowing for overlook and eavesdropping.
- [60] They questioned the feasibility of planting trees along the property line. They would be difficult to water and the six foot fence would block the sunlight. They are not in favour of such landscaping being included as a condition of the Development Permit.
- [61] The large, flat structure would affect their ability to look up and see light. While the Garage Suite will increase the Respondent's property value, it will decrease the value of the neighbouring properties. No one will want to purchase a home with this large structure next door.
- [62] While they love some of the new builds in the area, this Garage Suite is not suitable because the corrugated steel does not blend well with the principal dwelling on the site, or the style of nearby properties.
- [63] The stairway and platform are definitely a privacy concern. Anyone sitting on it will be looking into neighbours' yards.
- [64] Their experience is that the Respondent is running a home based business with regular meetings being held and people coming to pick up products.

Decision

- [65] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:
1. This Development Permit authorizes the development of a two-storey Accessory Building (main floor Garage, second floor Garage Suite, 6.1 metres by 9.75 metres) and to demolish the existing Accessory Building (rear detached Garage). The development shall be constructed in accordance with the stamped and approved drawings.
 2. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)

3. WITHIN 14 DAYS OF THE END OF THE NOTIFICATION PERIOD with NO APPEAL and prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.5)
4. Privacy Screening must be installed on the south and northwest portions of the second-floor entranceway to the Garage Suite to minimize overlook into adjacent properties.
5. Frosted or opaque glass treatment shall be used on the windows on the West elevation to minimize overlook into adjacent properties (Reference Section 87.8).
6. The maximum Height shall not exceed 5.5 metres in accordance with Section 52.
7. Single Detached Housing requires 2 parking spaces per Dwelling and 1 parking space per 2 Sleeping Units shall be provided for the Garage Suite. (Reference Section 54.2 and Schedule 1)
8. Only one of a Secondary Suite, Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling (Section 87.11).
9. The number of unrelated persons occupying a Garage Suite or Garden Suite shall not exceed three (Section 87.12).
10. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business (Section 87.13)
11. A Garage Suite or Garden Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision (Section 87.15).

Reasons for Decision

[66] A Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone.

[67] In *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261, the Court of Appeal stated that “the object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.”

[68] The question before the Board is whether this Discretionary Use, requiring no variances, is compatible having regard to valid planning reasons.

[69] After considering the concerns raised by the Appellants and other opponents, the Board is satisfied that the proposed development is compatible with adjacent uses.

[70] The Board notes the significant opposition to this Development Permit. Though a number of the opponents were from outside the neighbourhood, there were a large number from within the neighbourhood, and from within the 60 metre notification zone. The Community League provided a letter of opposition. Of the two most affected neighbours, one was the Appellant and the other appeared but took no position. The one affected neighbour who spoke in support of the appeal was situated across the lane.

[71] Those opposed to the proposed development voiced concerns about the size of the building, the impact it would have on sunlight penetration onto neighbouring properties, the use of corrugated steel and concrete as building materials, the flat roof and the potential for overlook.

Size

[72] The Board notes that no variances are required with respect to size. The Applicants could build a larger structure on the subject site, while still being compliant with the development regulations.

[73] The Board canvassed the possibility of making additional landscaping a condition of the Development Permit. The Development Officers had indicated that such landscaping could provide visual relief to the Appellants, by breaking up the west facing wall of the proposed development. The Respondents were willing to comply with such a condition. The Appellants were not in favour of such a condition, and consequently the Board did not adopt it.

Sunlight Penetration & Shadow Impact

[74] The Development Officer drew the Board's attention to Section 14.3 of the *Edmonton Zoning Bylaw* which provides guidance regarding a Sun Shadow Impact Study. This provision directs the Development Authority to evaluate a proposed development's shadow impact "based on the difference in shadow between the allowable three-dimensional building massing and the proposed three-dimensional building massing, during the March equinox." Where a building requires no variance, this provision defines the resulting shadow impact as the Applicant's "as-of-right" shadow impact.

[75] The Board accepts that in evaluating the Shadow Impact of the proposed development, it is relevant that the Size of the proposed development required no variances, and the Applicants could potentially build an even larger, compliant structure on their lot.

[76] The Board takes note of the Respondent's submission, particularly Exhibit B, the Sun Shading Impact Study. Exhibit B demonstrates that the sun shadowing of the proposed development is negligibly different from the impact that would be created by a one-storey, typical pitched roof garage.

Building Materials: Corrugated Steel & Concrete

[77] The Appellants and other concerned neighbours expressed concern about the building materials being used, specifically the corrugated steel and concrete foundation. The Board notes that Section 87.14 directs the Development Authority to consider the compatibility of building materials when deciding on the Development Permit related to Garage Suites. Section 87.14 states, in part, that:

“...the Development Officer may exercise discretion in considering a Garage Suite having regard to:

- a) compatibility of the Use with the siting, geodetic elevations, Height, roof slopes and building types and materials characteristic of surrounding low density ground-oriented housing and development”

[78] The Development Officer indicated that she had exercised this discretion, but noted inherent subjectivity of the provision and indicated that more emphasis had been placed on the clear cut rules in the *Edmonton Zoning Bylaw*.

[79] The Board notes that the aesthetic appeal of a development, including the building materials used is subjective. Some opponents to the proposed development characterized it as ugly, but the Respondents had selected this style of development because they found it visually appealing.

[80] In considering compatibility of proposed building materials, the Board notes that the neighbourhood already has a variety of building materials in it. The neighbourhood is experiencing infill development that has ushered in a new era of styles and building materials.

[81] Mr. Engleman specifically noted that his company had already constructed one house and was constructing a second house in this neighbourhood using materials similar to those that will be used in the proposed development.

[82] The Board accepts that building materials are compatible to the extent that tastes in building materials and design change over time.

Flat Roof

[83] The Board notes the concern with respect to the flat roof. The Development Officer approved this design of roof on the basis that it is consistent with the partial flat roof on the adjacent property. The Board also notes that the Respondents could build a taller structure if they used a sloped roof design, and such a structure could have a greater impact regarding massing and sun shadowing on the Appellant’s property.

Privacy and Overlook

[84] The Development Officer conditioned that frosted or opaque glass treatment shall be used on the windows on the West elevation to minimize the overlook into adjacent properties.

The Board has adopted this condition as part of its decision.

- [85] Additionally, the Board has conditioned that Privacy Screening must be installed on the south and northwest portions of the second-floor entranceway to minimize the overlook into adjacent properties.

Development Officer's Recommended Revisions to Permit

- [86] The Board has accepted the Development Officer's submission regarding:
- i) the inconsistency between the dimensions on the Development Permit and the dimensions in the plans submitted by the Applicants, and
 - ii) the absence of the Demolition Permit for the existing Accessory building.
- [87] The Board has revised the Development Permit to correct these two issues with the Development Permit.



Ms. A. Lund, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

Mr. N. Somerville; Mr. A. Peterson; Mr. R. Hachigian; Mr. R Handa

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 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 Zoning Bylaw, 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.