

Edmonton Subdivision and Development Appeal Board

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Date: November 27, 2015
Project Number: 178220456-001
File Number: SDAB-D-15-263

Notice of Decision

This appeal dated October 20, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (Cell phone repair - FIX IT)

on Plan 9123406 Blk 6 Lot 95, located at 16120 - 61 Street NW, was heard by the Subdivision and Development Appeal Board on November 12, 2015.

Summary of Hearing:

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.

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

The subject site is zoned RF1 Single Detached Residential Zone. The approved development permit application was appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission received from Sustainable Development on October 30, 2015;
- A copy of a MLS property listing submitted by the Appellant; and
- One online response from a neighbouring property owner stating their neutral position.

At the outset of the appeal hearing, Mr. Hachigian indicated that he previously worked at the City of Edmonton Sustainable Development Department and knew the Development Officer in attendance at the hearing.

He indicated that it had been several years since his employment with the City and that he, himself, had no concerns about hearing the appeal.

None of the parties in attendance at the hearing had an objection to Mr. Hachigian sitting on the appeal panel.

The Board heard from Mr. Dromarsky, the Appellant, who made the following points:

1. He is concerned with the high volume of traffic in the “short” cul-de-sac.
2. He is concerned for the safety of his four children and a neighbour’s four children with the amount of vehicles in the cul-de-sac, which motivated him to file an appeal.
3. There are no sidewalks in the cul-de-sac.
4. He is supportive of his neighbour and his proposed business.

In response to questions by the Board, Mr. Dromarsky provided the following information:

1. He confirmed that all of the houses in the area have front attached garages.

The Board then heard from Mr. Liang, representing Sustainable Development, who made the following points:

1. He is speaking on behalf of the Development Officer who approved the development permit application.
2. He could not confirm if a Site visit was conducted when the development permit application was made.
3. He confirmed that the development permit application was for a Major Home Based Business and not a Basement Suite.

The Board then heard from Mr. Kendama, the Respondent, who made the following points:

1. He confirmed that the Basement Suite is not occupied and that it is used for family members who visit.
2. The Basement Suite will be converted into an entertainment room.
3. He has a full time job seven days a week, and the proposed Major Home Based Business will only occupy his time on a part-time basis.
4. He is willing to tell his clients to park on the Driveway.
5. He confirmed that he does advertise for the Major Home Based Business.

In rebuttal, Mr. Dromarsky made the following points:

1. He is agreeable to a condition imposed by the Board that clients for the Major Home Based Business will park on the Driveway of the subject Site.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Subdivision and Development Appeal Board imposes the following two conditions, additional to the 16 conditions imposed by the Development Authority in the original Permit decision:

1. The existing Basement Suite in the Dwelling shall not be used as a Secondary Suite.
2. All parking related to the Major Home Based Business shall take place on the Driveway of the subject Site.

In granting the Development Permit, the Development Authority imposed 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 cm (8") x 30.5 cm (12") 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. The site shall not be used by employees or business partners as a parking or storage location.
7. Maximum business associated visits shall not exceed 5 per day.
8. Client visit must be by-appointment only and appointments shall not overlap.
9. Hours of operations must be between 12:00PM to 7:30PM on weekdays and 9:30AM to 7:30PM on weekends.
10. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
11. No person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, of a maximum gross vehicle weight (G.V.W.) exceeding 4 500 kg. (Reference Section 45.1(a))
12. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
13. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood.

14. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.

15. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).

16. This approval is for a 5 year period from the date of this decision. This Development Permit expires on October 12, 2020. Should the business continue to locate at this location, an extension of Development Permit must be approved prior to October 12, 2020.

NOTES:

1. 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.

2. This Development Permit is not a Business License.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone.
2. The Board recognizes that parking issues can occur in cul-de-sac areas. The Board is satisfied that the subject Site has sufficient parking on the driveway and that the Secondary Suite is not currently being used.
3. Evidence was presented that the double garage and Driveway provide ample on-site parking to accommodate the two vehicles registered to the subject property and the Major Home Based Business.
4. The Board is satisfied that the approval is for a five year period and any traffic concerns can be raised in connection with future development permits.
5. 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.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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 5th 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.

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

c.c.

Edmonton Subdivision and Development Appeal Board

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Date: November 27, 2015
Project Number: 170552372-013
File Number: SDAB-D-15-264

Notice of Decision

This appeal dated October 15, 2015, from the decision of the Development Authority for permission to:

Construct a front veranda (6.86 m by 1.98 m) to existing approved Single Detached House

on Plan 2600KS Blk 17 Lot 16, located at 7707 - 143A Street NW, was heard by the Subdivision and Development Appeal Board on November 12, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to approve – subject to conditions and a variance in the maximum allowable projection of a veranda into the minimum required Front Setback – an application to construct a front veranda (6.86 m by 1.98 m) to an existing approved Single Detached House. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Supporting documents received with the Appeal;
- A written submission received from Sustainable Development on November 5, 2015;
- An online response in support of the proposed development;
- Submissions from the Respondent; and
- An additional supporting document from the Respondent.

At the outset of the appeal hearing, Mr. Hachigian indicated that he previously worked at the City of Edmonton Sustainable Development Department and knew the Development Officers in attendance at the hearing.

He indicated that it had been several years since his employment with the City and that he had no concerns about hearing the appeal.

None of the parties in attendance at the hearing objected to Mr. Hachigian sitting on the appeal panel.

The Board heard from Ms. Clearwater, the Appellant, who was accompanied by her son, Mr. Grant Clearwater, who together made the following points:

1. She has lived in the area for 41 years.
2. Her original concern was that the foundation wall of the existing Dwelling is at the maximum allowable projection.
3. In her opinion, the veranda is in violation of City regulations.
4. She constructed an addition on her property in 1977 which complied with the City Bylaws.
5. The property on the other side of the subject Site has a variance of 8 inches for the projection.
6. She believes previous legislation for two Storey developments required neighbourhood consultation.
7. Mr. Grant Clearwater indicated that a new development must recognize neighbourhood requirements and conform to the regulations of the *Edmonton Zoning Bylaw*.
8. The front of the roof of the addition on his mother's house is 8 feet high from Grade.
9. The three windows on the addition to his mother's house will face a wall that is 25 feet to 28 feet in Height.
10. The veranda will extend beyond the wall of that addition.
11. They referred to Section 11.3(1)(a) and (b) of the *Edmonton Zoning Bylaw*:

The Development Officer may approve, with or without conditions as a Class B Development, an application for development that does not comply with this Bylaw where:

1. the proposed development would not, in his opinion:
 - a. unduly interfere with the amenities of the neighbourhood; or
 - b. materially interfere with or affect the use, enjoyment or value of neighbouring properties.
12. In their opinion, whether the Development Officer properly exercised his discretion under Section 11.3 is the most important consideration, as the view from the three windows of the addition to Ms. Clearwater's house will be impacted by the development.
13. There will be a sun shadow impact on the shrubs and garden on Ms. Clearwater's property.
14. They are concerned with the activity that may take place on the veranda.
15. They referred to Section 44.1(a) of the *Edmonton Zoning Bylaw*:

The following features may project into a required Setback or Separation Space as provided for below:

1. a) verandas, porches, eaves, shade projections, unenclosed steps, chimneys, belt courses, sills, together with any other architectural features which are of a similar character, provided such projections do not exceed 0.6 m in the case of Setbacks or Separation Spaces of 1.2 m or greater. Where unenclosed steps extend into Side Setbacks which are not used for vehicular access, such steps shall not exceed a Height of 1.0 m above Grade;

16. A projection of 0.6 metres into the required Front Yard is allowed and the Applicant is requesting a projection of 1.9 metres.
17. In their opinion, the only affected property within the 60 metre notification radius is that of the Appellant, Ms. Clearwater.
18. They believe that the Bylaw exists for a reason and should be followed.

In response to questions by the Board, Ms. Clearwater and Mr. G. Clearwater provided the following information:

1. They do not have evidence to support their concern that property values will decrease due to the proposed development.
2. There will be a safety issue when vehicles are backing out of Driveways.
3. There is a day home two doors from the subject Site and there will be a safety issue with children running onto the street.
4. The subject Dwelling blocks two of the windows on Ms. Clearwater's property and the veranda will not block the last window.
5. They confirmed that they did not review the proposed plans for the veranda.
6. The proposed veranda will negatively affect the view of the sidewalk from Ms. Clearwater's property.
7. There is a 7.2 metre Setback on the existing Dwelling with an allowable projection of 6.7 metres due to the blockface calculation, and the intrusion of the veranda into the Setback space will only be 0.9 metres.
8. They believe the pilings for the veranda were poured in September and are 3.0 metres from the foundation wall.
9. The veranda will block the sun only on the northeast corner of her house.
10. The previous Single Storey house was located farther back on the property and was demolished.

The Board then heard from Mr. Brad Clearwater, Ms. Clearwater's son, who made the following points:

1. He questioned whether the proposed veranda was a two Storey development rather than one Storey.

2. The bottom illustration shown on the proposed plans will be the view from the Appellant's property.
3. The floor Height of the veranda is two and a half feet to three feet above the main level of Ms. Clearwater's Dwelling.
4. They are concerned with the veranda and not the house itself.
5. In his opinion, the Respondent always intended to build the veranda.
6. In his opinion, the *Edmonton Zoning Bylaw* should be followed.
7. He spoke to an Inspector who informed him that the house could be built further into the required Front Yard.

In answer to questions by the Board, Mr. B. Clearwater provided the following responses:

1. He conceded that steps are not included when determining the Front Yard calculation.
2. In his opinion, steps could be built from the front of the house instead of a veranda.

The Board then heard from Mr. Fournier, an affected property owner within the 60 m notification area, who made the following points:

1. In his opinion, the Bylaw is in place and should not be changed.
2. It is the responsibility of the developer and the City to consider the area being developed.

The Presiding Officer informed Mr. Fournier that a development, such as a veranda, is always part of the Development Permit. However, in this particular instance, the need for a variance for the veranda was discovered only after the initial plans were submitted.

The Board then heard from Mr. Liang and Mr. Wen, representing the City of Edmonton Sustainable Development, who answered questions by the Board and provided the following information:

1. They confirmed that the veranda will be a one Storey structure with a roof.
2. The only variance is regarding the veranda which was shown on the original proposed plans.
3. Although other older homes in the area are Setback further on their respective properties, the implementation of the Mature Neighbourhood Overlay allows newer developments to be located closer to the front sidewalk.
4. The Setback of 7.2 metres was based on the average blockface of the street.
5. They confirmed that the appropriate Setback and the variance granted will exceed the required setback by 0.89 metres (3 feet).

The Board then heard from Ms. Vu, representing the Respondent, DK 888 Development Inc., who made the following points:

1. Her company is a new developer and has only built two houses and they want to follow the requirements of the *Edmonton Zoning Bylaw*.
2. She reviewed her written submission to the Board and provided background about how the veranda was approved as part of the development permit application.

3. It was after a neighbouring property owner's inquiry that the City determined a variance was required for the veranda.
4. They were informed that a separate development permit application was required for the veranda.
5. She referred to Section 814.3(6) of the Mature Neighbourhood Overlay:

Notwithstanding Section 44 of this Bylaw, a single Storey Platform Structure may project a maximum of 2.0 m into a Front Setback from the first Storey of a Dwelling, provided that a minimum of 3.0 m is maintained between the Front Lot Line and the Platform Structure.

6. In her opinion, veranda is not defined in this Section and could be considered a Single Storey Platform Structure. In such case, the veranda would actually be permitted to project 2.0 metres into the Front Setback, which would comply with the *Edmonton Zoning Bylaw*.
7. The garage was originally proposed on the other side of the house and Setback to provide for better sightlines from the Appellants property. However, they were informed by the City that the mature trees could not be removed; therefore, the garage was moved to the north side of the house.
8. She reviewed the photographs that were attached to her letter to the Laurier Heights Community League. The photographs illustrate the subject Site being developed in relation to the Appellant's property and the exact location of the veranda.
9. The veranda will end at the north front entrance and will not extend to the south of the front entrance which will reduce the impact on the Appellant's sightlines and will not negatively impact privacy issues.
10. She provided the Board with photographs of similar developments in the immediate area that have verandas and are comparable in scale and design to the proposed development.
11. She confirmed that the pilings for the veranda were poured after the original foundation. The pilings were outlined on the original plans.
12. She provided the Board with a hand written diagram showing how the sun shadowing will affect the neighbouring property.
13. In her opinion, the proposed development will provide little or no sun shadowing on the Appellant's house as it is south of the subject Site.
14. In her opinion, the veranda will not be a safety issue.
15. During construction, she provided the Appellant with the company's phone number, in case they had any concerns.
16. The Appellant only called her to have the portable washroom moved to a different location.

In rebuttal, Ms. Clearwater and Mr. G. Clearwater made the following points:

1. They referred to Section 11.4(1) of the *Edmonton Zoning Bylaw*:

In approving an application for a Development Permit pursuant to Section 11.3, the Development Officer shall adhere to the following:

1. a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone;
2. They believe there is no hardship to build on this property.
3. They referred to Page 2 of the Respondent's submission and expressed disagreement with her definition of veranda as a single Storey Platform Structure under Section 814.3(6).
4. They do not agree that a veranda is included in the definition of Platform Structure. The veranda is not a balcony, a raised terrace, or a deck, and therefore should not be allowed.
5. They believe the veranda is not a Single Storey Structure in the Front Yard and referred to Section 44 of the *Edmonton Zoning Bylaw* in support of this assertion.
6. They believe the properties referred to in the photographs are located on 142 Street and not 143A Street, where the proposed development is located.
7. They appreciated that Community Consultation took place; however, the atmosphere and circumstance of the consultation was unfair and could not be impartial as there were two people conducting the survey on a Sunday afternoon.
8. They reiterated that the proposed development will have a negative impact on their property and will decrease property values.

After the Presiding Officer closed the appeal hearing, the Appellant requested that the Board accept a petition in opposition to the development, as they had misunderstood the document disclosure process and did not submit it during the hearing. The request was made through a Subdivision and Development Appeal Board staff, who relayed the request to the Board.

The Board agreed to accept the Appellant's petition.

The Board notes that 4 signatures of residents within the 60 m notification area are provided on the petition. Two of these signatures are from individuals who reside at the same address.

Decision:

The appeal is DENIED and the decision of the Development Authority is VARIED and the development is GRANTED as applied for, subject to the following CONDITIONS:

1. The development shall be constructed in accordance with the stamped and approved drawings under DP 170552372-001.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RF1 Single Detached Residential Zone.

2. Section 814.3(6) states:

Notwithstanding Section 44 of this Bylaw, a single Storey Platform Structure may project a maximum of 2.0 m into a Front Setback from the first Storey of a Dwelling, provided that a minimum of 3.0 m is maintained between the Front Lot Line and the Platform Structure.

3. The Board accepts the Respondent's submission that Section 814.3(6) allows a Single Storey projection of 2.0 metres into a required Front Yard. The proposed veranda is such a single Storey projection, for the following reasons:

- a. Section 44(1)(a) provides that verandas may project into a required Setback so long as the projection does not exceed 0.6 m. The proposed veranda projects 1.5 metres into the minimum required Front Setback, which would appear to exceed the limitation and therefore require a variance.
- b. However, the subject property falls within the Mature Neighbourhood Overlay ("MNO"), and Section 814.3(6) of the MNO states that "*Notwithstanding* Section 44... a single Storey Platform Structure may project a maximum of 2.0 m into a *Front Setback*" [emphasis added]. The wording of Section 814.3(6) is clear: the use of the term, "notwithstanding", instructs the reader that within the Mature Neighbourhood Overlay, Section 814.3(6) takes precedence over Section 44(1)(a).
- c. The question that the Board must then turn its mind to is whether the proposed veranda falls under the definition of a single Storey Platform Structure.
- d. Although veranda is not defined under the *Edmonton Zoning Bylaw*, Platform Structures are defined under Section 6.1(74) as "structures projecting from the wall of a building that may be surrounded by guardrails or parapet walls. Common structures include: balconies, raised terraces, and decks."
- e. The examples of common Platform Structures provided under Section 6.1(74) form a non-exhaustive list, which opens the door for the proposed covered veranda to be considered a Platform Structure projecting into the Front Setback.
- f. The use of the term "single Storey" clearly indicates that the structure may be covered. Indeed, the Board notes that Section 6.1(98) defines Storey as follows:

Storey means that portion of a building, which is situated between the top of any floor *and the top of the floor next above it*. If there is no floor above, the Storey is the portion of the building, which is situated between the top of any floor *and the ceiling above it*.
[emphasis added]

- g. The Board finds that a covered veranda can be a structure that projects from the wall of a building. A covered veranda may also be surrounded by guardrails.
- h. For the above reasons, the Board finds that the proposed veranda falls under the definition of a single Storey Platform Structure.
- i. Section 814.3(6) was developed to provide for front verandas, consistent with the Mature Neighbourhood Overlay's purpose to promote a "pedestrian-friendly design of the streetscape."

- j. Since the proposed veranda is a Platform Structure, the development regulations under Section 814.3(6) of the Mature Neighbourhood Overlay applies.
4. Section 814.3(6) permits a single Storey Platform Structure to project up to 2.0 m into the Front Setback. The existing Dwelling is set back 7.2 metres, which meets the minimum Setback requirements under Section 814.3(1) of the MNO. The proposed veranda projects 1.5 m into this required Setback, which falls within the maximum 2.0 m allowed for single Storey Platform Structures under Section 814.3(6).
 5. Based on the above, a variance to Section 814.3(6) of the MNO is not required, and the Board approves the veranda development.
 6. In the event that the Board has interpreted the *Edmonton Zoning Bylaw* incorrectly, the Board would nevertheless grant a variance of 0.89 metres to Section 44, and permit the 1.49 metre Front Projection for the following reasons:
 - a. The veranda only extends for a portion of the Width of the existing Dwelling and will not have a negative impact on the view or sun shadowing on the Appellant's property.
 - b. The veranda was part of the initial Development Permit Application, which was approved.
 - c. The covered veranda is an open structure, which further minimizes the impact upon the Appellant's property.
 7. The Board acknowledges the Appellant's concern regarding the impact that the development to which the veranda is attached will have upon the view from her property. However, there is nothing in the *Edmonton Zoning Bylaw* that protects the right to a view from adjacent properties, so long as the development is built within the Setback and Height regulations that are established within the *Edmonton Zoning Bylaw*.
 8. 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.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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 5th 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.

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

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Date: November 27, 2015
Project Number: 163972980-001
File Number: SDAB-D-15-265

Notice of Decision

This appeal dated October 19, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory building to a General Industrial Use (Alco Inc.)

on Plan 7621517 Blk 38 Lot 33A, located at 6925 - 104 Street NW and Plan 4451S Blk 38 Lots 13-19, located at 6909 - 104 Street NW, was heard by the Subdivision and Development Appeal Board on November 12, 2015.

Preliminary Matter:

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.

The Presiding Officer indicated that the Appellant was not in attendance at the hearing and several attempts by staff to contact the Appellant were not successful.

The Presiding Officer asked the Respondent to respond with regard to a possible tabling of the hearing.

The Board heard from Mr. Lawrence and Mr. Desrochers, representing the Respondent, Alco Inc., who together made the following points:

1. They wish to proceed with the appeal hearing as further delay will hold up the proposed development.

The Board then heard from Mr. Welch, representing Sustainable Development, who made the following points:

1. He is not opposed to proceeding with the appeal hearing; however, it is only fair to have the Appellant in attendance.

Decision:

The Board will proceed with the Appeal Hearing and base its decision on the information provided at the hearing and the Appellant's written submission.

Reasons for Decision:

1. The start of the hearing was delayed a full 45 minutes after the scheduled start time.
2. Since having been notified of the hearing date, there has been no request for a postponement or re-scheduling of the hearing.
3. No indication had been received prior to the hearing that the Appellant would be delayed or unable to attend.

Summary of Hearing:

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

The Board heard an appeal of the decision of the Development Authority to approve an application to construct an Accessory building to a general Industrial Use (Alco Inc.), located at 6909/6925 – 104 Street NW. The subject site is zoned DC1 Direct Development Control Provision.

The development permit application was approved, subject to conditions and variances granted in the maximum allowable Setback requirements, design regulations and landscaping requirements. The approved development permit application was appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission received from Sustainable Development on November 5, 2015; and
- Several documents submitted by the Sustainable Development regarding emails between parties and drawings, etc.

The Board heard from Mr. Lawrence and Mr. Desrochers, both representing the Respondent, Alco Inc., who together made the following points:

1. They provided the Board with two submissions, a written submission from Stantec and a Brief Synopsis from Mr. Desrochers, marked "Exhibit A".
2. Alco Inc. has existed on the subject Site since 1947 as a machine shop.
3. Alco Inc. has branches in Edmonton, Nisku, and Red Deer with approximately 60 to 70 employees in the Edmonton facility and approximately 300 to 400 Alberta-wide.
4. A building at the back of the property was destroyed by fire and the proposed development will replace that building.

5. Although the proposed development is an Industrial Use, the photographs provided illustrate that it has the appearance of a Commercial Use.
6. General Industrial Uses existing at the time of the adoption of the Bylaw are a listed Use in Area 1 of the Direct Development Control Provision.
7. In their opinion and from a Planning perspective, the proposed development is an Accessory Building.
8. They believe that the Development Authority did exercise reasonable discretion when approving the proposed development.
9. The proposed development is a replacement for an existing accessory Use for an Industrial Use and not a new development.
10. They referred to TAB 2 and TAB 3 of their submission, and referenced the Strathcona Junction Area Redevelopment Plan which allows Industrial Uses.
11. In their opinion, the Urban Area Setback should not be an issue as it is a Commercial Use and not an Industrial Use.
12. Any new development would be required to comply with the Strathcona Junction Area Redevelopment Plan.
13. Alco Inc. has done their part in making the Accessory Building look like it is a Commercial Use and that it complies with the requirements of the *Edmonton Zoning Bylaw*.
14. They are agreeable to planting 25 bushes to screen the proposed development from 69 Avenue.

The Board then heard from Mr. Welch, representing Sustainable Development, who answered questions from the Board and provided the following information:

1. The Development Authority has the power to vary the landscaping requirement as he did.
2. With regard to the provision of the DC1 and the power of the Development Authority, he stated that Sustainable Development operates on the basis that they have the power to grant variances unless otherwise stated in the Direct Control Bylaw.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following CONDITIONS as set out in the Permit decision:

- 1) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$200.00.
- 2) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay the Sanitary Sewer Trunk Charge (SSTC) fee. SSTC is applicable to the proposed development area of 0.4137 ha at the rate of \$7152/ha. For information purposes, the year 2015 rate is \$7152/ha. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Planning and Development Department, 10250 - 101 Street NW.

3) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

cash to a value equal to 100% of the established landscaping costs;

or

an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. (Reference Section 55.6).

4) No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard and loading, storage, parking and trash collection areas shall be screened from view from any adjacent site and public roadway in accordance with Section 54 of the Zoning Bylaw.

5) Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

6) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices (Reference Section 51).

7) All mechanical equipment, including roof mechanical units, shall be concealed by screening so that the equipment is not visible from the viewpoint of a pedestrian viewing the building from any public or private roadway, in a manner compatible with the architectural character of the building or concealed by incorporating it within the building.

NOTES:

1) 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.

2) The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).

3) Signs require separate Development Applications.

4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

5) 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.

6) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

[unedited from the Permit decision]

In granting the development the following variances, as set out in the Permit decision, to the *Edmonton Zoning Bylaw* are allowed:

1) Variance of setback requirements from S. DC1(16136) (“Additional Development and Design Regulations – Area 1”)(a):

- From a maximum of 2.5m to 13.77m, from the front (69 Avenue) yard.

2) Variance of design regulations from S. DC1(16136), SS. 7(i) and (“Additional Development and Design Regulations – Area 1”)façade:

- The requirement for glazing on the new building is waived.

- The requirement for additional façade treatments is waived.

3) Variance of landscaping requirements from SS 54.2(3)(a), 55.4(7), and DC1(16136)(7)(o):

- From 4 trees to 0 trees.

- All proposed landscaping may be deciduous plant material.

- The requirement from landscaping to separate public throughfares from off-street parking lots is waived.

[unedited from the Permit decision]

Reasons for Decision:

The Board finds the following:

1. The proposed development is a listed Use in the DC1 Direct Development Control Provision.
2. Based on the evidence submitted, the proposed development is in keeping with the General Purpose of the DC1 Direct Development Control Provision and the Strathcona Junction Area Redevelopment Plan.
3. The Development Authority had the discretion to grant the three variances as the proposed Development is an Industrial Building and will be Setback from 69 Avenue.
4. Based on the evidence submitted, the proposed development is in keeping with the directions of City Council as set out in the Strathcona Junction Direct Development Control Provision.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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 5th 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.

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

c.c.