



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 1, 2016
Project Number: 225587628-001
File Number: SDAB-D-16-287

Notice of Decision

- [1] On November 16, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **October 25, 2016**. The appeal concerned the decision of the Development Authority, issued on October 20, 2016, to refuse the following development:

To construct a two storey Accessory Building (Garage Suite on second floor, Garage on main floor; 7.92 metres by 7.32 metres) and to demolish the existing rear detached Garage

- [2] The subject property is on Plan 244HW Blk 3 Lot A, located at 7825 - 115 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing 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.

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.

Summary of Hearing*i) Position of the Appellant, Mr. S. Proctor*

- [7] He reviewed his written reasons for his appeal and highlighted the following points.
- [8] This is a straightforward application except for the fact that the proposed Garage with Garage Suite is approximately 63 centimetres or 25 inches higher than the existing house and therefore exceeds the maximum allowable Height requirement.
- [9] None of the neighbours that were consulted expressed any concerns or objections.
- [10] The Development Officer has noted that the maximum allowable Height for a Single Detached House in this neighbourhood is 8.6 metres. If the existing house is redeveloped at some point in the future, it is possible that the house will be higher than the proposed Garage with Garage Suite.
- [11] There are houses in this neighbourhood that are higher than the existing house and the proposed Garage with Garage Suite.
- [12] It was his opinion that the proposed height of the Garage and Garage Suite will not have any impact on his neighbours.
- [13] It is his intention to provide two parking spaces inside the proposed Garage and one space between the end of the Garage and the laneway.
- [14] This is a corner site that provides a number of on street parking spaces and it is located in close proximity to public transit and the LRT.
- [15] Responding to questions, Mr. Proctor confirmed that the additional parking space can be accommodated on a concrete pad that will be as wide as the proposed Garage.
- [16] The proposed balcony will face west towards an open green space and will not overlook any adjacent properties.
- [17] He and his wife visited neighbours to provide information and review the proposed drawings. This neighbourhood is comprised of many rental properties and they encouraged occupants that they spoke with to share the information with the property owners. They also spoke with the most affected property owners who reside to the east, north and across the lane way.

[18] While it would be the preference of their neighbour to the east not to have the proposed Garage with Garage Suite adjacent to their rear yard, they understand the needs of their family and the reason for the proposed development.

[19] They undertook the community consultation to demonstrate their due diligence even though it was not a requirement.

ii) Position of the Development Officer, Mr. B. Langille:

[20] The Height of the proposed Garage Suite is 7.11 metres which exceeds the maximum allowable Height of 6.50 metres. The ridge line of the roof is 2.13 metres above the maximum allowed building Height of 1.5 metres.

[21] The Height of the Principal Building is 5.61 metres.

[22] The Height was determined based on the Grade of the lot which was calculated by using the four corners of the site.

[23] He acknowledged that the lot slopes from the front to the back by approximately 1 to 2 feet. However, even if the Grade had been calculated by using only the back corners of the site, a Height variance, although smaller, would still be required.

[24] There is also a deficiency of one on-site parking space but he acknowledged that the configuration of the lot makes it almost impossible to provide a third on-site parking space.

[25] On street parking is available to property owners in this area and the LRT station is a short walk from the subject property.

[26] He referenced the aerial photograph contained in his written submission to illustrate the location of the subject site and the context of the surrounding area. There is a park to the west, a large vacant side yard to the south and only one abutting neighbour to the east.

[27] There are large mature trees on a neighbouring property which could mitigate the visual impact of the proposed Garage Suite.

[28] The right elevation of the Garage Suite does not contain any windows, which eliminates any privacy issues into the neighbouring rear yard.

iii) Rebuttal of the Appellant

[29] Mr. Proctor had nothing further to add in rebuttal.

Decision

[30] 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. Immediately upon demolition of the building, the site shall be cleared of all debris;
2. Eave projections shall not exceed 0.46 metres into required yards or Separation spaces less than 1.2 metres, pursuant to Section 44.1(b) of the *Edmonton Zoning Bylaw*;
3. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a Principal Dwelling;
4. 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;
5. Notwithstanding the definition of Household within this bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three;
6. The Garage Suite shall not be subject to separation from the Principal dwelling through a condominium conversion or subdivision.

ADVISEMENTS:

- i) Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii) The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.
- iii) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws/licences/licences_permits/oscam-permit-request.aspx.

- iv) Unless otherwise stated, all above references to “section numbers” refer to the authority under the *Edmonton Zoning Bylaw* 12800.
- v) 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 Direction 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.

In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable Height of 6.50 metres as per Section 87.2(a)(i) is varied to allow an excess of 0.61 metres, thereby increasing the maximum allowed to 7.11 metres.
2. The maximum ridge line of the roof of 1.5 metres as per Section 52.2(c) is varied to allow an excess of 0.63 metres, thereby increasing the maximum allowed to 2.13 metres.
3. The minimum allowable number of Parking Spaces of 3 as per Section 54.2, Schedule 1(A)(3) is varied to allow a deficiency of 1 space, thereby decreasing the minimum allowable to 2 Parking spaces.

Reasons for Decision

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

[32] Based on a review of the plans, the Board finds that the Appellant made a conscientious effort to design the proposed Garage Suite to comply with the Height requirements of *Edmonton Zoning Bylaw*. Specifically, the Height of the proposed development from the surrounding Grade to the midpoint of the roof is 6.5 metres as required by Section 87.2(a)(i) of the *Edmonton Zoning Bylaw*. However, once the Grade of the subject site was determined, the proposed development exceeded the maximum allowable height.

[33] The variance in Height has been allowed for the following reasons:

- a) While the differential in height between the Principal Dwelling and the Garage Suite is greater than the 1.5 metres allowed, the evidence provided indicated that the height of the Proposed Development is not uncharacteristic of the area.
- b) A requirement of the Mature Neighbourhood Overlay is to maintain the streetscape in older mature neighbourhoods. The Board notes that while the

proposed Garage Suite is higher than the principal residence on the site, the proposed development is oriented toward the flanking roadway and will not be visible from or have an adverse impact on the front streetscape.

- [34] The subject site is a corner lot with a park located to the west and a larger vacant Side Yard to the south which leaves only one abutting neighbour located directly to the east. In addition there are some mature trees on that property which will help mitigate the visual impact of the Garage Suite.
- [35] The Appellant undertook extensive community consultation even though it was not a requirement and received support from neighbouring property owners.
- [36] The proposed Garage Suite is oriented towards the west and the east elevations and does not contain any windows, which will eliminate any concerns regarding over sight or privacy issues into neighbouring rear yards.
- [37] The variance of one on-site parking space has been allowed for the following reasons:
- a) The configuration of the lot makes it almost impossible to provide a third on-site parking space;
 - b) This is a corner lot that provides additional on street parking and it is located within walking distance of the LRT and public transit.
- [38] The Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and is of the opinion that granting the required variances 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.

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

Board members in attendance: Mr. R. Handa, Mr. V. Laberge, Ms. S. LaPerle, Ms. K. Thind

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 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*,
 - 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 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.



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edmontonsdab.ca*

Date: December 1, 2016
Project Number: 229273113-001
File Number: SDAB-D-16-288

Notice of Decision

- [1] On November 16, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **October 28, 2016**. The appeal concerned the decision of the Development Authority, issued on October 26, 2016, to refuse the following development:

To construct an Accessory building (rear detached Garage, 11.58 metres by 3.66 metres) and to demolish an existing Accessory structure (rear detached Garage)

- [2] The subject property is on Plan 1884KS Blk 6 Lot 22, located at 8411 - 148 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer'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.

Summary of Hearing*i) Position of the Appellant, Mr. B. Heshka*

- [7] He would like to demolish the existing detached Garage and build a longer detached Garage in the same location in order to retain the rear yard.
- [8] The new garage will be lengthened towards the rear lane to accommodate two vehicles parked in tandem.
- [9] He consulted with his neighbours who did not have any concerns and welcomed the new development into this mature neighbourhood.
- [10] The deficiency in the required Side Yard occurred because the fence extends onto the neighbouring property to the north and the original garage was built in relation to the fence and not the property line.
- [11] It would be his preference to site the new garage in the same location in order to minimize the wasted space between the garage and the fence.
- [12] The neighbours who share the fence have a front and rear facing garage on their property and have no objection to the proposed development.
- [13] Community consultation was undertaken and the property owners who they spoke to did not have any objections but he was not able to consult with his most affected neighbour at that time. However, he has spoken with them recently and verbal support was provided.
- [14] The existing garage is 1.8 metres from the existing house and it was his assumption that this variance was granted when it was built. The new garage will be the same distance from the house.
- [15] There will be an overhead door on the front of the garage and one on the rear to allow one vehicle to access the garage from the front and one from the rear. The garage will be large enough to allow two vehicles to park in tandem.
- [16] The existing concrete pad will be extended to accommodate the new longer garage and driveway that will also allow the retention of some mature trees.
- [17] The existing wood fence is in relatively good condition. It was his opinion that rebuilding the fence on the property line at some future time will not impact the proposed new garage.

- [18] The eave projections for the new garage will be 16 inches which is the same as the projection on the existing garage.
- [19] Relocating the Garage to accommodate the Side Yard setback will require moving an existing shed and mature fruit tree.
- [20] The garages on the property to the north parallel the new proposed garage.
- [21] Imposing a condition to site the Garage 0.9 metres from the property line would result in increased costs because additional concrete work would be required. The proposed plan will allow the extension of the existing concrete pad to accommodate the new longer garage.
- [22] He would be agreeable to the imposition of a condition requiring a reduction in the eave projection into the existing north side yard.
- [23] The garage will not be insulated or dry walled.

ii) Position of the Development Officer, Ms. K. Pihooja

- [24] During the initial review it was determined that the proposed garage would be located 0.92 metres from an existing fence and that the fence was built 0.47 metres onto the abutting property which resulted in the proposed garage being sited 0.45 metres to the side property line.
- [25] Upon further review, it was determined that the fence was built 0.51 metres onto the abutting property and that the proposed detached Garage will be located 0.41 metres from the side property line, instead of 0.45 metres as indicated on the refusal.
- [26] An additional variance will be required for the projection of the eaves of the proposed detached Garage because the distance of the eaves to the side property line is 0 metres instead of 0.44 metres.
- [27] Community consultation was a requirement because of the deficiency in the minimum required distance between the detached garage and the principal dwelling. Although no objections were received regarding the proposed development, it was noted that the Applicant was not able to obtain any feedback from the most affected property owner to the north.
- [28] Ms. Pihooja acknowledged the evidence provided by the Appellant that verbal support has subsequently been provided by the most affected property owner.

- [29] In response to a question, it was her opinion that removing and rebuilding the fence could have a material impact on the adjacent property owner.
- [30] The existing structure is non-conforming because of the deficiency in the minimum required distance between the garage and the house. However, she noted that if the garage was built prior to the implementation of the Mature Neighbourhood Overlay, a variance would not have been required.
- [31] It was her opinion that the requirement for separation distance helps to alleviate some of the massing concerns and provides some amenity space in the rear yard.
- [32] Her primary concern is the deficiency in the minimum required Side setback.

iii) Rebuttal of the Appellant

- [33] The fence is angled and extends further into the adjacent property at the rear of the site.
- [34] None of the building materials from the existing garage can be used in the new construction.

Decision

- [35] 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 projection of the eaves on the north side of the proposed detached Garage shall not exceed 0.15 metres, exclusive of the rain water gutters.
 2. This Development Permit authorizes the development of an Accessory building (rear detached garage, 11.58 metres by 3.66 metres) and to demolish an existing Accessory structure (rear detached Garage). The development shall be constructed in accordance with the stamped and approved drawings.
 3. An Accessory Building or Structure shall not exceed 4.3 metres in height. (Reference Section 6.1(50) and 50.3(2)).

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

1. The minimum allowable distance between a Principal Building and rear detached Garage of 3.0 metres as per Section 814.3(22) is varied to allow a deficiency of 1.2 metres, thereby decreasing the minimum allowed to 1.8 metres.
2. The minimum allowable distance between the Accessory building and Side Lot Line of 0.9 metres as per Section 50.3(4)(b) is varied to allow a deficiency of 0.49 metres, thereby decreasing the minimum allowed to 0.41 metres.
3. Section 44.1(b) is waived to allow the projection of eaves into a required Setback or Separation Space pursuant to the Board's Condition #1 (noted above).

Reasons for Decision

- [36] The proposed detached Garage is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [37] The Appellant undertook community consultation and provided support from neighbouring property owners for the proposed development. However, the Board notes that this consultation did not include any feedback or response from the most affected neighbour to the north. The Board accepts the evidence of the Appellant, provided at the hearing, that consultation with his neighbour to the north has subsequently occurred and verbal support was provided for the proposed detached Garage.
- [38] Based on the evidence provided, the proposed detached Garage will run parallel with an existing detached Garage on the adjacent property to the north which will mitigate any visual impacts of the new garage.
- [39] The variance in the minimum required setback from the Side Lot Line has been granted based on the evidence provided that there is ample clearance between the existing fence and the existing garage. The new Garage will be sited in the same location and allowing the variance will address the concern of the property owner by reducing the amount of unmanageable empty space between the garage and the fence.
- [40] The requirements of Section 814.3(22) of the *Edmonton Zoning Bylaw* have been varied because the proposed new detached Garage will be sited in the same location as the existing detached Garage and the distance between the Principal Dwelling and the Garage will not change. This variance has existed for many years without any known complaint.
- [41] The Board has waived the requirements of Section 44.1(b) of the *Edmonton Zoning Bylaw* because a condition has been imposed to limit the projection of the eaves into the

north Side Yard which should alleviate any impacts on the most adjacent property to the north.

- [42] The Board finds that even if the existing fence was relocated to the property line in the future, the conditions imposed will ensure that there is ample clearance between the proposed detached Garage and a new fence.
- [43] The Board finds the proposed development will not interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance: Mr. R. Handa, Mr. V. Laberge, Ms. S. LaPerle, Ms. K. Thind

Important Information for the Applicant/Appellant

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 - 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 5th Floor, 10250 – 101 Street, Edmonton.

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3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: December 1, 2016
Project Number: 178894883-007
File Number: SDAB-D-16-289

Notice of Decision

- [1] On November 16, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **October 25, 2016**. The appeal concerned the decision of the Development Authority, issued on October 20, 2016, to refuse the following development:

To operate a Major Home Based Business (Health Enhancement Centre and Aesthetics Services - Adding three (3) part-time employees for sole proprietor business - TOP CARE SPA)

- [2] The subject property is on Plan 2531AB Blk 4 Lot 6, located at 11128 - 124 Street NW, within the RA8 Medium Rise Apartment Zone. The Medium Density Residential Overlay and West Ingle Area Redevelopment Plan apply 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, and the refused Development Permit; and
 - The Development Officer's written submissions;
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – photographs submitted by the Development Officers
 - Exhibit B – copies of business license submitted by the Appellant

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

i) Position of the Appellant, Ms. X. Qin

[8] Ms. Qin wants to hire some employees to assist her with the business. She is a single mom and needs some help taking care of her son.

[9] Most people she employs work at several locations. She calls around until she finds someone able to come help her. At most, she will only have two people working at the same time.

[10] She was advised that if she wants to hire 3 individuals, she needs to apply for a different type of development or Use. She indicated that she is just following what the City is telling her to do.

[11] Upon questioning from the Board, she stated the subject Site is an apartment building. There is a private access to the subject unit. There are 3-4 suites in the building.

[12] Ms. Qin stated she would be present plus 2 employees. On 97 street, businesses have signs on their place of business so that is why she included signage on the property.

[13] Upon questioning from the Board, she confirmed they have 3 parking spaces at the back, which are solely for her use.

[14] Upon questioning from the Board, she confirmed she does not live there. She lives close by because the business activity was interrupting her son. Her employee lives there. She is not aware of any complaints. In fact, her neighbours provide her food and help her clean. She rents the property.

[15] The maximum number of clients she will have is 9, but it can range from 0 to 9 clients per day.

ii) Position of the Development Officers, Mr. J. Hogberg and Mr. C. Lee

[16] As per the definition of a Major Home Based Business (Section 7.3(7) of the *Edmonton Zoning Bylaw*), if the Appellant does not reside at the property, the proposed development cannot meet the definition and cannot be approved.

[17] Mr. Hogberg submitted photographs from his inspection of the property, marked Exhibit A. There were a total of four treatment rooms. He told the Appellant she needed to convert one of the treatment rooms into a bedroom. The rest of the photographs show a kitchen, a washroom and other components that make up a dwelling.

- [18] It was Mr. Hogberg's understanding that the Appellant resided there as a renter. He was not aware of anyone else living at the Site other than the Appellant's son.
- [19] At the time of his investigation, he believes the proposed development is more commercial than residential and is not secondary to the residential use of the building, in contravention to the definition of a Major Home Based Business.
- [20] Mr. Hogberg spoke to the owner of the building after he issued his Order. The landlord wanted to know what is going on. He is not sure if the landlord is aware of the appeal.
- [21] The Board reviewed the Development Permit Application form and there appeared to be some inconsistency with the questions and responses of owning and living at the property. At the time of the investigation, the Appellant stated that she lived at the property, but he is now unsure given the evidence submitted today. There has not been a subsequent inspection.
- [22] In response to a question from the Board about what factors he examined when considering Section 75.9, Mr. Lee stated that he reviewed the original approval before this proposed increase in intensity. It had exactly the required amount of parking with zero employees. With the addition of 3 employees, the Site is over capacity.
- [23] Mr. Lee acknowledged that it was an oversight on his part for not noticing the Appellant checked off that she did not live at the site. This would have been an immediate refusal. He believes 9 client visits is too impactful for this type of housing. He did not check any parking restriction. He acknowledged 124 Street is very busy. He did not review adjacent sites for compatibility. Mr. Lee that the West Ingle Area Redevelopment Plan has specific requirements for commercial developments on 124 Street and makes no reference to a Major Home Based Business. Thus the proposed development might be compatible with commercial developments on 124 Street.
- [24] The Development Officers indicated the nature of complaints involved the commercial nature of the business and signage which indicates the presence of a business. The signage has since been removed.

iii) Rebuttal of the Appellant

- [25] The Appellant submitted a copy of her business license, marked Exhibit B. She received her business license on April 11, which was for 1 person. She went back in July to add more employees. She was advised she could do this.
- [26] Mr. Lee confirmed that a valid Development Permit is required prior to issuance of a Business License. Mr. Lee also confirmed that assuming the Appellant lived at the property, she can have up to two employees working there. However, under the original

approval dated September 8, 2015 to operate a Major Home Based Business (Health Enhancement Practitioner), the Appellant indicated she had zero employees. This permit also has a condition that if any details change as written on application form, this renders the Development Permit null. As soon as the Appellant exceeds zero employees, that permit is null. He pointed out that the business license indicates “Independent”.

- [27] The Appellant confirmed that she does not live at the property. Her friend lives there and she wants to make her a partner.

Decision

- [28] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

- [29] Under section 220.3(7), a Major Home Based Business is a Discretionary Use in the RA8 Medium Rise Apartment Zone.
- [30] Under section 7.3(7) of the *Edmonton Zoning Bylaw*, Major Home Based Business means development consisting of the use of an approved Dwelling or Accessory building **by a resident of that Dwelling** for one or more businesses such businesses may generate more than one business associated visit per day. 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. The Dwelling may be used as a workplace by a non-resident (emphasis added).
- [31] The Appellant conceded that, while she had previously been a resident of the property, she was no longer residing at the property. The Board finds that the Appellant does not comply with the definition of Major Home Based Business Use and the Board has no authority to vary the Use definition.

[32] The Board further agrees with the Development's Officer finding that the proposed development contravenes Section 75.9 of the *Edmonton Zoning Bylaw* and the Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.

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

Board members in attendance: Mr. R. Handa, Mr. V. Laberge, Ms. S. LaPerle, Ms. K. Thind

Important Information for the Applicant/Appellant

1. 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.
2. 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.