

Edmonton Subdivision and Development Appeal Board

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916 Wildwood Way NW
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T6T 0M2

Date: December 3, 2015
Project Number : 178262341-003
File Number: SDAB-D-15-266

Notice of Decision

This appeal dated October 22, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations (Driveway extension, 1.21m x 5.45m on left side, 2.5m x 5.45m on right side) to an existing Single Detached House (existing without permits)

on Plan 1123458 Blk 60 Lot 60, located at 916 - Wildwood Way NW, was heard by the Subdivision and Development Appeal Board on November 18, 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 refuse an application to construct exterior alterations (Driveway extension, 1.21metres x 5.45 metres on left side, 2.5 metres x 5.45 metres on right side) to an existing Single Detached House (existing without permits), located at 916 - Wildwood Way NW. The subject Site is zoned RSL Residential Small Lot Zone.

The development permit was refused because the proposed development could not be considered a Driveway; a Parking Area may not be located within the Front Yard; the Front Yard must be landscaped; and the width of the Driveway exceeds that allowed by the *Edmonton Zoning Bylaw*.

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

- Supporting documents submitted by the Appellant with the Appeal on October 22, 2015;
- A Written submission received from Sustainable Development on November 12, 2015;
and
- A copy of the Canada Post Registered Mail confirmation.

The Board heard from Mr. Hitesh Patel, the Appellant, and his wife, Mrs. Patel, who made the following submissions:

1. The Driveway extension is necessary because parking is congested.
2. The neighbour on the right side of the subject Site has five vehicles and the neighbour on the left side of the subject Site has four vehicles.
3. The tenant in the basement suite has one vehicle and may be purchasing another.
4. The issue is that if the tenant parks in the middle of the Driveway, his vehicle blocks the entrance to the garage when the Appellant and his wife leave in the morning.
5. Ninety nine percent of the houses in the neighbourhood have Driveway extensions.
6. The Appellant and his wife previously submitted a petition to the Board with signatures from neighbouring property owners in support of the Driveway extension.
7. The Appellant and his wife completed the required landscaping and received their deposit back.
8. They are willing to plant additional trees if required to do so.
9. They did not pave the entirety of the Front Yard. Green spaces exist in the Front and Rear Yards.

In response to questions from the Board, Mr. and Mrs. Patel provided the following information:

1. They moved into the house in July, 2015.
2. The Driveway and the Driveway extension were poured as a single structure at the same time.
3. They poured more concrete than what was shown on the approved Site plan.
4. Their neighbour has a Driveway extension, so they believed they were allowed to have a similar Driveway/Driveway extension.
5. Although the Site plan shows the third and fourth parking spaces on the Driveway, parking in this area blocks garage access.
6. The tenant currently parks on the Driveway extension so they can get in and out of the garage.
7. When they applied for a Compliance Certificate, they were advised to apply for a Development Permit for the existing Driveway extension.
8. They confirmed that approximately 10 to 15 houses in the neighbourhood, within the 60-metre notification radius of the subject Site, have similar Driveway extensions.
9. They want their tenant to park on the left side of the Driveway, rather than in front of the front door.
10. The walkway to the front door is on the right side of the Driveway and is 2.5 metres wide.

The Board heard from Ms. Lai and Ms. Hetherington, from Sustainable Development, who answered questions from the Board. They provided the following information:

1. The Driveway extension on the right side is not considered a walkway. Section 6.1(55) of the *Edmonton Zoning Bylaw* provides that "Landscaping means the preservation or modification of the natural features of a Site through the placement or addition of any or a combination of the following:
 - a. soft landscaping elements such as trees, shrubs, plants, lawns and ornamental plantings;
 - b. decorative hardsurfacing elements such as bricks, pavers, shale, crushed rock or other suitable materials, excluding monolithic concrete and asphalt, in the form of patios, walkways and paths; and
 - c. architectural elements such as decorative fencing, walls and sculpture."
2. There is sufficient parking on-Site for the Principal Dwelling and the Secondary Suite without the proposed Driveway extension.
3. They acknowledged that the aerial photograph in their written submission showed that all the other houses on the block have similar Driveway extensions. Although the Driveway extensions may be characteristic of the neighbourhood, since 2011 the City has been enforcing the landscaping requirements **In** Front Yards. Therefore they would not have approved this development either before it was constructed or afterwards as an existing development.
4. While the petition may show that the neighbours support the proposed development, their support is not necessarily an indication that the Driveway extension will not affect the use, enjoyment or value of neighbouring parcels of land.
5. The City is trying to enforce Landscaping requirements and stop Driveway extensions which create parking lots, three stalls in Width, in Front yards.
6. In their opinion, if every house has three vehicles parked on the Driveway, the cumulative result constitutes a negative impact on the neighbourhood.
7. Site inspections are only conducted if a Driveway is poured and a complaint is received or if someone makes an application for a Compliance Certificate.
8. In their opinion, since the majority of properties in the neighbourhood have Driveway extensions, it is not likely a complaint was received.
9. In their opinion, builders are aware that Driveway extensions are not allowed, but they do not always relay that information to the property owner.
10. A correction to the application was required for the dimensions of the Driveway extension. The left side of the Driveway extension should be 0.91 metres by 5.18 metres and the right side extension should be 1.6 metres by 5.18 metres.
11. The allowable Width of a Driveway for a two-car garage is 6.2 metres. The total Width of this Driveway and Driveway extension is 9.02 metres (an excess of 2.82 metres).
12. The original Driveway was approved with a Width of 6.4 metres. The garage was built wider than the dimension shown on the originally approved Site plan (6.52 metres wide instead of the 6.4 metres that had been approved).
13. Ultimately, the total Width of the Driveway and Driveway extensions will be 9.03 metres and the total required variance would be the difference between 6.2 metres and 9.03 metres.

14. Even though the original Driveway was approved at 6.4 metres, the required variance calculation should revert to the standard 6.2 metres maximum because the garage was not built as approved in the Site plan. However, they could not point to a specific section in the *Edmonton Zoning Bylaw* which supports this position about the size of the variance.
15. Typically, a property owner is required to apply for exterior alterations if the development was not built as it was previously approved.
16. The appeal before the Board concerns the Driveway extension, not the house, because the compliance letter was silent with respect to the house.

Mr. and Mrs. Patel made the following submissions in rebuttal:

1. They reiterated that they did provide Landscaping and did not pour concrete over the entire Front yard.
2. They recently became aware that a permit was required.
3. They applied for a Compliance Certificate because money is being held back by their lawyer and they need compliance for the money to be released.
4. The money has been held up for four or five months and they would like to get the matter resolved.
5. They have stamped, approved plans which show the garage is 17 feet wide, but there are no approved plans that show the extended Driveway as it was ultimately poured.

Decision:

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. Absolutely no parking is allowed within the portions of the Driveway extensions highlighted in yellow on the approved Site plan (copy attached).

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

1. Section 54.1(4) is varied to allow a total Width of 9.03 metres for the Driveway and the proposed Driveway extensions as shown on the approved Site plan (copy attached).
2. Section 55.4 requirements regarding Landscaping are waived only so far as they apply to the proposed Driveway extensions as shown on the approved Site plan (copy attached).

Reasons for Decision:

The Board finds the following:

1. The proposed development is comprised of two existing Driveway extensions and is Accessory to a Permitted Use in the RSL Residential Small Lot Zone.

2. Based on the evidence submitted, the Driveway and the Driveway extensions were poured in 2015 on a single occasion and as a single structure.
3. Based on the photographs previously submitted by the Appellant and the aerial photograph in the Development Authority's written submission, several, if not all, Driveways in the immediate neighbourhood are similar in size, including in Width, to the proposed development.
4. Based on this evidence, the proposed development is very characteristic of the neighbourhood.
5. This evidence also shows that the Landscaping currently in place in the Front Yard of the subject Site is typical of other Front Yards in the neighbourhood.
6. The proposed development has been in place for several months with no known complaints. The Appellants' request for a Compliance Certificate prompted a review of the proposed development, the Development Authority's refusal and ultimately this appeal.
7. A petition was submitted with signatures of support from the majority of neighbouring property owners within the 60-metre notification radius in support of the proposed development.
8. No one appeared to oppose the proposed development and no letters of opposition were received by the Board.
9. With the condition imposed by the Board, 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*,
 - 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*, R.S.A. 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.

Maws

Subdivision and Development Appeal Board



HAGEN SURVEYS (1982) LTD.

ALEJERTA LAND SURVEYORS
8929 - 20 STREET
EDMONTON - ALBERTA
T6P 1J-8
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D. J. HAGEN A.L.S.
G. D. CROSS, A.L.S.

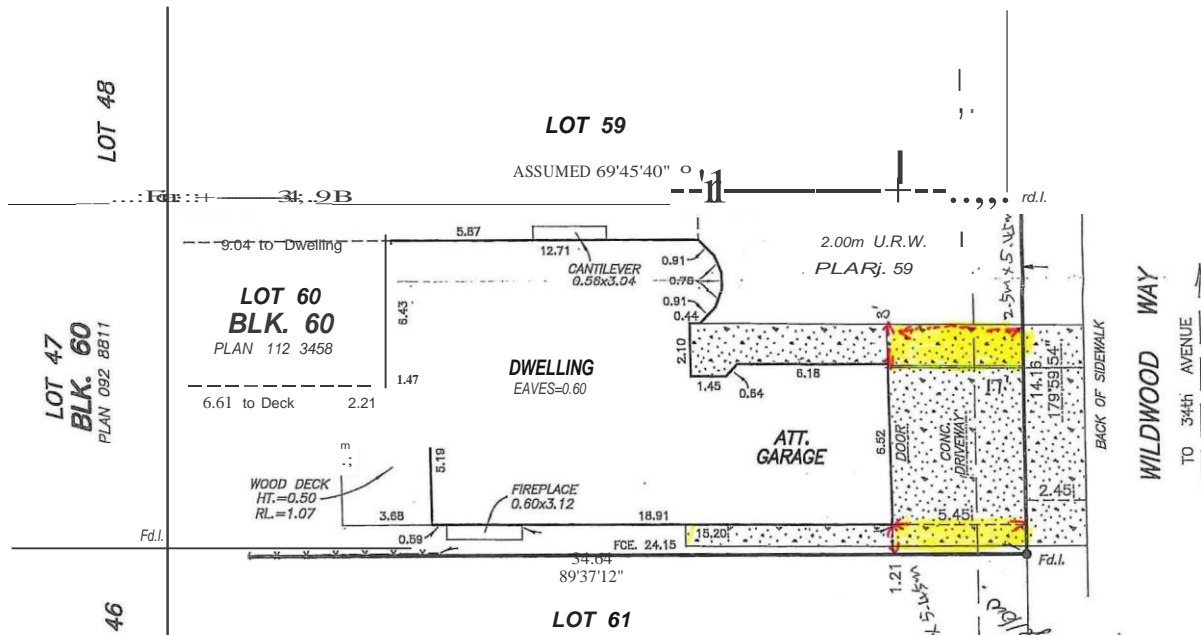
N. R. RONSKO, A.L.S.
D. G. CHEN, A.L.S.

SURVEYORS' STAMP

CLIENT: HITESH PATU / AUGUST 10, 2015

PAGE 2

LEGEND:	ASSUMED	BUILDING	DOCUMENT	RETAINING	ACCESS ROAD	AIR POLE	ASSO BLDG	BAY WINDOW	DRIVEWAY	FOUNDATION	RET. ASPHALT	CANTILEVER	POWER BASEMENT	B/W	ADJACENT CONCRETE	FON. EAVES	ASPH. CANT.	FENCE TYPICAL	BRICK PLANTER	ADJ.	FIREPLACE	FP. R/W	S/W	FENCE OVERHANG	ATTACHED	RIGHT-OF-WAY	FOUND	IRON POST	MARK	BOUNDARY	SUBDIVISION	PROPERTY LINE	HEIGHT RA/UNG HT.	MOVEABLE	RAD/IAI	BRICK FACING	HT. RL.	(M)	(R)	8.F. m
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@monton
DEVELOPMENT PERMIT
REFUSED

BY: I-X Q'19
DEVELOPMENT AUTHORITY

PROJECT #: 178262341-003

RECEIVED
OCT 27 2015
SUBDIVISION AND
DEVELOPMENT
APPEAL

- NOTES:
1. ALL DISTANCES ARE IN METRES AND DECIMALS THEREOF
 2. UNLESS OTHERWISE SPECIFIED, THE DIMENSIONS SHOWN RELATE TO DISTANCES FROM PROPERTY BOUNDARIES TO OUTSIDE WALLS ON THE DATE OF SURVEY.
 3. THIS PLAN IS PAGE 2 OF A REAL PROPERTY REPORT AND IS NEFFECTIVE IF IT IS DETACHED FROM PAGE 1.
 4. COPY OF TITLE SHOWN ON REVERSE SIDE OF THIS DOCUMENT
 5. FENCES SHOWN IN URBAN AREAS ONLY.
 6. ALL FENCES SHOWN ARE WITHIN 0.20m OF THE PROPERTY LINE UNLESS OTHERWISE NOTED.
 7. ALL MEASUREMENTS TO FENCES ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 8. UNDERGROUND UTILITIES NOT LOCATED.
 9. ALL YARD DIMENSIONS SHOWN ARE PERPENDICULAR OR RADIAL FROM PROPERTY LINES UNLESS OTHERWISE INDICATED.
 10. THIS DOCUMENT IS NOT VALID UNLESS IT BEARS AN ORIGINAL SIGNATURE (IN BLUE INK) AND A RED HAGEN SURVEYS (1982) LTD. PERMIT STAMP.

**Edmonton Subdivision and
Development Appeal Board**

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Date: December 3, 2015
Project Number: 177283697-001
File Number: SDAB-D-15-267

Notice of Decision

This appeal dated October 23, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-Detached House with front verandas

on Plan RN50 Blk 107 Lot 4, located at 11415 - 84 Street NW, was heard by the Subdivision and Development Appeal Board on November 18, 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 refuse an application to construct a Semi-Detached House with front verandas, located at 11415 - 84 Street NW. The subject Site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

The development permit was refused because of a deficiency in the minimum required Site area and a deficiency in the depth of the rear Amenity Area.

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

- Community Consultation submitted by the Appellant;
- Photographs submitted by the Appellant;
- A copy of the Canada Post Registered Mail delivery confirmation;
- A copy of the Development Permit, submitted by the Development Authority;
- A copy of the Development Permit Application and construction details, submitted by the Development Authority; and
- Semi-detached application form and abandoned wells declaration, submitted by the Development Authority.

The Board heard from Mr. Hou the Appellant, who made the following submissions:

1. He addressed the two reasons for refusal of the development permit set out by the Development Authority.
2. He had discussions with the Development Authority with respect to the outdoor Amenity Area on September 18, 2015, and believed that a variance in the Amenity Area would be granted.
3. With respect to the deficiency in the *minimum* required Site area, he received 19 signatures from neighbouring property owners within the 60-metre notification radius in support of the proposed development.
4. He spent four days canvassing the area and only one person would not sign the petition; that person did not indicate a specific position with respect to the proposed development.
5. After several attempts, he was unable to reach eleven of the neighbouring property owners.
6. The existing house on the subject Site is 60 years old and is not safe.
7. The existing house needs extensive repairs and he believes it is better to build a new development.
8. Based on his discussions with neighbouring property owners, he believes there is consensus that the proposed development will increase property values in the neighbourhood.
9. He discussed the potential sun shadowing impact with the neighbour to the north of the subject Site.
10. The neighbour to the north inquired about the Side Setback. He told her that the Setback was compliant with *Edmonton Zoning Bylaw* requirements.
11. He referred to the photographs submitted prior to the hearing. The house in the first photograph is located one block away from the subject Site.
12. The proposed development is being constructed by the same company and will follow the same design.
13. There are two houses in the area that will follow the same design as the proposed development.
14. He provided two photographs showing front and rear views of another lot in the neighbourhood with a development similar to the proposed development and the same Site area as the subject Site, marked "Exhibit A".

The Board heard from Ms. Heimdahl, representing Sustainable Development, who answered questions from the Board. Ms. Heimdahl provided the following information:

1. The size of the lot makes it unsuitable for Semi-detached Housing even though it is a Permitted Use. Two dwellings require a larger Site area.
2. She was referred to the map in the Agenda and asked if Semi-detached Housing, which is a Permitted Use in the RF3 Small Scale Infill Development Zone, would be unsuitable throughout the area because the lots throughout the neighbourhood are consistent in Site area with the subject Site. She confirmed that she would apply this policy to the entire area.
3. Semi-detached Housing is acceptable in the neighbourhood if it is located on a larger lot.

4. Aside from the Site area, the proposed development complies with the regulations of the *Edmonton Zoning Bylaw* except for the Amenity Area, which is a minor deficiency.
5. No variances were required for the maximum Site Coverage, parking, Setback, or any regulations of the Mature Neighbourhood Overlay.
6. The Front Setback complies with the regulations of the *Edmonton Zoning Bylaw*.
7. The development shown in the Appellant's first photograph was similar to the subject Site and was approved with nearly the same variances as the proposed development, but at a different time. The climate surrounding infill developments has changed and a more restrictive policy is currently being applied.
8. The neighbours' support for the proposed infill development gives her more comfort that this development is acceptable.
9. Site area refers to more than the length multiplied by the Width of the property. The additional required Site area is intended to enhance the Amenity Areas for the residents of the property.
10. Although the aerial photograph of the area appears to show other houses with small Amenity Areas, this was not evidence that it is characteristic of the neighbourhood to have smaller Amenity Areas because the required Amenity Area for Single Detached Housing is different from that required for Semi-detached Housing.
11. She could not confirm whether the Amenity Area would have been approved or not.
12. At the time of the conversation with the Appellant about the Amenity Area on September 18, 2015, she had not reviewed the application in great detail and had not yet realized there was a deficiency in the Site area.
13. The only infill development she was aware of in the area is one block away; it was the Appellant who brought this to her attention.
14. The notification map shows that there are nine properties in the area that have multiple dwellings on a lot, but it does not specify the type of dwellings.

Mr. Hou did not have anything to add in rebuttal.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

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

1. The minimum required Site area of 442.2 square metres per section 140.4(3) is reduced by 74.6 square metres to allow a Site area of 368.14 square metres.
- 2.) The minimum required dimension of 4.0 metres for Private Outdoor Amenity Areas per section 47(5) is reduced by 0.38 metres to allow depth of 3.62 metres for the Amenity Area in the Rear Yard.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. Apart from the two development regulations concerning Outdoor Private Amenity Area dimensions and Site area, the proposed Semi-detached Housing complies with all of the regulations in the Mature Neighbourhood Overlay and the RF3 zone.
3. The Board grants the variance in the width of the Outdoor Amenity Area because the variance is for a single dimension and there is no indication that the reconfigured Amenity Area in the Rear Yard will have a negative impact on either the occupants of the Site or the neighbouring property owners.
4. The Board grants the variance in the minimum required Site area for the following reasons.
 - a. This subject Site and surrounding properties have been designated RF3 where Semi-detached Housing is a Permitted Use. It appears from the Development Authority's submissions and the notification map that all lots are of similar dimensions and therefore are all deficient in minimum required Site area for Semi-detached Housing per Section 140.4(3). The result is that a strict application of the section would mean that no Semi-detached Housing developments could be built in this neighbourhood.
 - b. While a variance to the Site area is required, the Board finds that the proposed Semi-detached Housing meets other development regulations, in particular regulations for parking, Setback, Site Depth, and Site Width, which taken together are indicators that the subject Site is suitable for the proposed development.
 - c. The Appellant provided photographic evidence of similar, newly constructed Semi-detached developments in the vicinity which are located on lots of the same or similar size.
 - d. This development will be characteristic of the other new developments in the area in size and scale.
 - e. The Appellant conducted extensive Community Consultation. He visited properties within the 60-metre notification radius on four separate occasions. He received support for the proposed development from those neighbours including the two adjacent, and arguably most affected, neighbours.
5. The Board notes that under Section 140, Duplex Housing is also a Permitted Use in the RF3 Zone and would not require a variance for Site area; Duplex Housing requires a minimum Site Depth of 30.0 metres and a minimum Site Width of 10.0 metres which is equivalent to Semi-detached Housing, but a Site area of only 300 square metres. Duplex Housing and Semi-detached housing have equivalent Densities and the allowable building dimensions and massing are similar, particularly with respect to front/back Semi-detached Housing designs such as the proposed development.
6. For the reasons above, it is the Board's opinion that the proposed development, with the variances granted and the attached advisements, 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

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2. Obtaining a Development Permit does not relieve you from complying with:
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 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/2007 - 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*, R.S.A. 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.

Additional Advisements:

7. The Height of the principal building shall not exceed the maximum allowed under the *Edmonton Zoning Bylaw*.
8. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties.
9. Semi-detached Housing requires two on-site parking spaces per Dwelling and may be in tandem to the attached garage. (Section: 54.2(3) Schedule 1).

10. Except for the hard surfacing of driveways and/or parking areas approved on the Site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Edmonton Zoning Bylaw*.
11. Notwithstanding the Landscaping regulations of Section 55 of the *Edmonton Zoning Bylaw*, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area. (Section 140.4(16)).
12. Each Dwelling within Semi-detached Housing shall be individually defined through a combination of architectural features that may include variations in the rooflines, projection or recession of the facade, porches or entrance features, building materials, or other treatments. (Section 140.4(18)).
13. Lot grades must match the Engineered approved lot grading plans for the area.
14. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
15. The development of a Secondary Suite(s) in a Semi Detached House is prohibited by the *Edmonton Zoning Bylaw*. There may be an inspection in the future to ensure that no illegal suite has been developed.
16. Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw*.
17. Immediately upon demolition of the building, the site shall be cleared of all debris.

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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Ms. K. Cherniawsky, Pres} er
Subdivision and Development Applal Board

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18011 - 34 Street NW
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Date: December 3, 2015
Project Number: 179669631-001
File Number: SDAB-D-15-269

Notice of Decision

This appeal dated October 26, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (Trucking Business)

on Plan 7722309 Lot 1, located at 18011 - 34 Street NW, was heard by the Subdivision and Development Appeal Board on November 18, 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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to operate a Major Home Based Business (Trucking Business), located at 18011 - 34 Street NW. The subject Site is zoned AG Agricultural Zone.

The development permit was refused because the proposed development: is a General Industrial Use which is neither a Permitted nor a Discretionary Use in the AG Agricultural Zone; is more appropriately located in an Industrial Zone; will generate excessive vehicular traffic compared with a farm; employs a number of non-resident employees or business partners in excess of the allowable limit of two; involves outdoor business activity or outdoor storage of 8 transport trucks on the property; involves truck traffic originating from the property which will create external noise that would interfere with the enjoyment of adjacent properties.

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

- Maps and photographs of the area submitted by the Appellant;
- Support photographs submitted by the Agent for the Appellant;
- Letters of support submitted by the Agent for the Appellant;
- Notes with photographs attached submitted by the Development Authority;

- The Development Permit Application and letter from neighbours, submitted by the Development Authority;
- A copy of the Certificate of Incorporation for H.P.C. Transport Ltd., submitted by the Development Authority; and
- A copy of the 2015 Annual Return for H.P.C. Transport Ltd., submitted by the Development Authority.

The Board heard from Mr. Bhardwaj, agent for the Appellant, who made the following submissions:

1. He reviewed the Appellant's written submission provided to the Board.
2. He referred to the map showing the Edmonton Energy Park from the Area Redevelopment Plan indicating that the subject Site is near the south end of the map.
3. The proposed Use will conform with the future development of the industrial park plan.
4. There have been discussions with the City regarding zoning and re-zoning of the property. He referenced the email provided in their submission between the Appellant and the City.
5. Re-zoning will require several very expensive studies. He felt it should not be the Appellant's responsibility to get the area re-zoned.
6. The trucks used for the Major Home Based Business are used to haul soil for City of Edmonton projects.
7. The Minor Impact Utility Service Use class could apply to this activity in addition to the Major Home Based Business Use class.
8. He refuted each reason for the refusal:
 - a. Refusal Reason No. 1: with respect to the General Industrial Use not being Penitlited or a Discretionary Use, he argued that he agrees the Major Home Based Business should be located in an Industrial Zone. However, due to the scale of the business in relation to the property and future zoning anticipated in the Area Redevelopment Plan, the proposed development should be allowed to operate from the subject Site.
 - b. Refusal Reason No. 2: with respect to the fact that the Major Home Based Business would be more appropriately located in a Commercial or Industrial Zone, he argued that the area does not have a residential character and the business will comply with the future zoning of the property.
 - c. Refusal Reason No. 3: with respect to the business generating an excess of vehicular traffic, he argued that the eight trucks associated with the business do not create excessive traffic in the area and all outdoor storage/parking takes place in designated parking spaces on the subject Site. The roads to access the Site are secluded and untraveled and there is no pedestrian traffic in the area
 - d. Refusal Reason No. 4: with respect to the number of non-resident employees, he advised the Board that non-resident employees will not be on the Site during the day, only at the beginning and end of the business day when they pick up and drop off the trucks.

- e. Refusal Reason No. 5: with respect to the outdoor business activity or outdoor storage of materials associated with the business, he argued that the business is only to park trucks overnight where they will not be visible from the road or any adjacent properties.
- f. Refusal Reason No. 6: with respect to the use of mechanical equipment or electrical equipment that creates external noise, or visible and audible interference with home electronics equipment in the adjacent Dwelling, he advised the Board that there are no Dwellings in close proximity to the subject Site and also the adjacent property owners have given consent.
9. 34th Street is not a designated truck route? but it is used by the City of Edmonton trucks that haul snow.
10. The trucks associated with the Major Home Based Business are empty when travelling on 34th Street so they will have a minimal impact on the road conditions.

The Board heard from Mr. Himat Grewal, who made the following submissions:

1. He is one of the residents of the subject Site.
2. They bought the property in October, 2011 for the purposes of operating the Major Home Based Business.
3. The previous property owner had trucks on this property and repaired Edmonton Transit buses.
4. The previous property owner assured them that this type of business was allowed on the subject Site.
5. With respect to on-Site repairs, only very minor repairs, such as replacing lights, will be done by the property owner at the subject Site. The trucks will be sent off-Site to a dealer or mechanic for all regular or major maintenance and repairs.
6. Six people live in the Dwelling on the subject Site, his parents, a grandparent, siblings and himself.
7. His parents run the business and he helps with the business when needed.
8. The other three people living in the Dwelling are not involved with the business.

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

1. While he acknowledges that parking eight trucks seems large, given the size of the property and the location of the on-Site parking, it is not imposing on this property. In his opinion, having eight trucks on this property is a Secondary Use to the principal Dwelling
2. If the number of trucks is compared to the scale of the property and the area where the trucks park, it is small compared to the total area of the Site and will not change the nature of the property.
3. He agreed that truck parking should be encouraged on Industrial Sites but also argued it should be allowed on the subject property as it is to be rezoned to Industrial in the future.
4. He suggested that the Board impose a condition that authorizes the business to operate only for a certain number of years until the zoning is changed to Industrial Use.
5. There will be eight trucks stored on the subject Site during the trucking season.
6. The trucks leave the Site by 5:00 a.m. and return at 4:30 p.m.

7. Parking the trucks on the subject Site allows the Appellants to monitor them and prevent vandalism.
8. The letters received in support of the proposed development are from neighbouring properties shown on the aerial photograph and notification map.
9. Two of the other properties within the notification zone are owned by the City and the Provincial Highway Department.
10. Two of their trucks were stopped on August 14, 2015, by a City Inspector who was concerned with the trucks travelling on 34th Street, a non-truck route.
11. They advised the City Inspector that the trucks were returning to the residence because they are stored there, which is what prompted the appeal process.
12. The Appellants confumed that they have a business permit for the trucking business but it is for a different location. They tried to apply for a business permit for the subject Site, but were told that the zoning issues needed to be dealt with first.
13. There are four passenger vehicles registered to the subject Site.

The Board heard from Mr. Dhillon, speaking on behalf of the Gursikh Temple, who made the following submissions:

1. The Temple is located within the notification radius.
2. The Temple is supportive of the proposed development and the parking of trucks on the
3. He has known the residents of the subject Site for several years; they are a hard working family.
4. There is no negative impact on the Temple from noise generated from the trucks, excess traffic in the area, or any other factors associated with the Major Home Based Business.

The Board heard from Mr. Liang, representing Sustainable Development, who answered questions from the Board:

1. Asked to explain the application of the suggested conditions for Major Home Based Businesses which seem more applicable to residential areas than this remote, rural location, he advised the Board that the standard regulations were used to evaluate all proposed Major Home Based Businesses and the developments must conform to those regulations.
2. With respect to the prohibition against outdoor storage, a variance would be required to allow business-related vehicles to be stored outdoors on a residential property.
3. He acknowledged that in this case outdoor storage will be shielded by trees on the property.
4. With respect to the prohibition against external noise, he noted that noise will potentially be created as a result of the Major Home Based Business, but did acknowledge that the nearest residential properties are located quite a distance away from the subject Site.
5. On-Site parking and repair of trucks must be secondary to the residential Use of the property. The storage of large trucks must be proportionate to the size of site and the Dwelling on the property.

6. The Area Redevelopment Plan contemplates re-zoning of this property at which time General Industrial Use would become a Permitted Use. In his opinion, re-zoning of the area may not happen for 30 to 50 years.
7. With respect to how the proposed storage of the trucks will change the residential character of the Dwelling or Accessory Buildings, he advised that the Appellant indicated in the application that the garage could be used as a shop and, therefore, he determined that the property will likely be used for heavy repair, which would be more appropriately located in a General Industrial Use zone.
8. With respect to the Appellant's submission that the Use could be considered a Minor Impact Utility Service Use, the definition of that Use does not fit the proposed Use because the trucks could be used for a variety of things other than services that support utilities.
9. The development permit was for a Major Home Based Business and was not reviewed as a Minor Impact Utility Service Use.
10. The proposed Use does not fit within the definition of a Minor Impact Utility Service.
11. The two Uses that could be applied to the proposed development are General Industrial Use and Major Home Based Business.
12. He had to determine the Use Class. Once it was determined to be a General Industrial Use, the proposed development had to be refused.
13. The reasons he feels the proposed development is not a Major Home Based Business but is a General Industrial Use are outlined in his submission.

Mr. Bhardwaj and Mr. Grewal did not have anything to add in rebuttal.

Decision:

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 principal Dwelling must remain occupied and the Major Home Based Business must be operated by a current resident of the principal Dwelling.
2. The Major Home Based Business must not change the principal character or external appearance of the on-Site principal Dwelling or the Accessory buildings.
3. The Major Home Based Business must adhere to the details regarding the size and scope of business operations stated in the development permit application.
4. Repair, maintenance, cleaning or servicing of the eight semi-trailer trucks or any other equipment used for the trucking business is not allowed on-Site.
5. Allowable outdoor storage is limited to storage/parking of up to eight semi-trailer trucks with empty single trailers within the eight designated stalls measuring 3.1 metres by 21.34 metres as identified on the Site *plan* submitted by the Appellant with the development permit application (copy attached).

6. On-Site outdoor parking spaces for the vehicles of the drivers of the eight semi-trailer trucks must be provided adjacent to the area designated for storage of the semi-trailer trucks indicated on the Site plan submitted by the Appellant with the development permit application (copy attached)
7. This approval is for a five-year period from the date of this decision at which time a new development permit must be obtained to continue to operate the business from this location.

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

1. The prohibition on outdoor business activity and outdoor storage of material or equipment associated with the business in section 75(5) is relaxed only to permit the storage/parking of up to a maximum of eight semi-trailer trucks within the eight designated stalls measuring 3.1 metres by 21.34 metres as indicated on the Site plan submitted by the Appellant with the development permit application (copy attached).
2. The limit on the number of non-resident employees or business partners working on-Site, per Section 75(4) is relaxed to allow up to eight drivers to pick up and drop off semi-trucks once per day.

Reasons for Decision:

The Board finds the following:

1. The Appellant applied for a Major Home Based Business, a Discretionary Use in the AG Agricultural Zone.
2. The development permit application described the on-Site business activities as parking of transport vehicles (8) and administrative paperwork.
3. The application was refused because the Development Authority determined that the proposed Use would be more appropriately classified as a General Industrial Use which is not a listed Use.
4. The Appellant argues that the proposed development is a Major Home Based Business or alternatively a Minor Impact Utility Service Use.
5. This application does not involve a typical Major Home Based business in a typical urban residential neighbourhood, it is a trucking business on a large, isolated lot within an AG Zone. In this case, the proper Use class must be determined within this unique context which includes the following factors:
 - a. Based on the Site plan attached to the written submission of the Development Officer, the subject Site is a large, trapezoid-shaped lot. The north lot line is 120.77 metres in length. The west lot line is 201.58 metres in length. The east lot line 206.51 metres in length. The south lot line is 74.84 metres in length.
 - b. The subject Site includes a Principal Dwelling located in the northern portion of the subject Site which the Board accepts is occupied by members of this family-owned business.

- c. The subject Site includes a large garden area, green spaces and several Accessory buildings of varied sizes. A perimeter fence and trees screen the lot from all sides.
 - d. The subject Site is an isolated, quasi-rural location zoned AG.
 - e. The subject Site is adjacent to, and cut off by, two major arterial roadways: Manning Drive to the east and Anthony Henday to the south,
 - f. There is significant distance between the subject Site and any residential development. The nearest residential Dwellings are located to the west and north at least one kilometre from the subject Site.
 - g. The proposed Major Home Based Business involves administration activities within the principal Dwelling and the outdoor storage/parking of eight semi-tractor trucks with empty trailers during evening and weekend hours in designated stalls and moving the trucks on and off the property during the work week.
 - h. The Board accepts the Appellant's submission that only very minor repairs, such as replacing lights, are performed on-Site and that the trucks and trailers are sent off-Site to a dealer or mechanic for all regular or major maintenance and repairs.
 - i. The outdoor storage/parking area identified in the aerial photographs for the eight semi-trailer trucks encompasses a relatively small fraction of the entire lot and is located in the southern portion of the subject Site.
6. Per section 7.7(7), Minor Impact Utility Service Use means a development for public utility infrastructure purposes which is likely to have some impact on the environment or adjacent land Uses by virtue of its appearance, noise, size, Traffic Generation or operational characteristics. Typical Uses include vehicle, equipment and material storage yards; for utilities and services; telephon exchanges; wire centres; switching centres; snow dumping sites; Transit Centres; transit depots and transfer facilities; water towers; hydrospheres; water treatment plants; power terminals and distributing substations; communication towers and gate stations for natural gas distribution.
 7. The Board agrees with the Development Officer that the proposed Use does not fit the definition of Minor Impact Utility Service Use because the eight semi-tractor trucks used in the proposed trucking business are privately owned by the Appellant and are not dedicated to public utility infrastructure purposes. The trucks may be used to transport any variety of cargo.
 8. The proposed Use could be classified as either General Industrial Use or Major Home Based business. The Board must choose the Use Class that best fits the business.
 9. Per section 7.5(2), General Industrial Use means development used principally for one or more of the following activities:
 - a the processing of raw materials;
 - b the making, manufacturing or assembling of semi-finished or finished goods, products or equipment;
 - c the cleaning, servicing, repairing or testing of materials, goods and equipment normally associated with industrial or commercial businesses or cleaning, servicing and repair operations to goods and equipment associated with personal or household use, where such operations have impacts that would make them incompatible in Non-industrial Zones;

- d the storage or transshipping of materials, goods and equipment;
- e the distribution and sale of materials, goods and equipment to institutions or industrial and commercial businesses for their direct use or to General Retail Stores or other sales Use Classes defined in this Bylaw for resale to individual customers; or
- f the training of personnel in general industrial operations.

This Use Class includes vehicle body repair and paint shops. This Use Class does not include Major Impact Utility Services and Minor Impact Utility Services or the preparation of food and beverages for direct sale to the public.

10. Per Section 7.3(7), 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 character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use Class includes Bed and Breakfast Operations but does not include General Retail Sales.
11. In the Board's opinion, the proposed development is best classified as a Major Home Based Business rather than a General Industrial Use for the following reasons:
 - a. The proposed business shares a Site with an occupied, residential Dwelling.
 - b. The proposed business occupies a relatively small portion of the Site and is located a significant distance from the Dwelling and the other existing Accessory buildings. The Site will not be used principally for the storage of trucks.
 - c. Business related on-Site outdoor storage/parking is limited to a maximum of eight semi-trailer trucks in designated stalls and associated employee parking.
 - d. The Board accepts the submission of the Appellant, that the property will not be used for the maintenance, cleaning, servicing, or repairing of the trucks or of any other equipment used for the trucking business. The Board has imposed a condition to ensure that such activity will not occur in the future.
 - e. The on-Site outdoor storage/parking area is well screened from the road and from neighbouring properties.
 - f. While the subject Site and surrounding properties are located within the boundaries of a large city, these properties are rural in use and nature. The proposed development is consistent with modern use of rural agricultural residential properties.
 - g. All things considered, the Board concludes that the business Use is secondary to the residential Use of the Site and does not change the residential character of the Dwelling or Accessory building. The Board has imposed conditions to ensure that the business Use does not expand.
12. The proposed Major Home Based Business is an appropriate discretionary Use at this location for the following reasons:
 - a. This subject Site is isolated and located at a significant distance (in excess of one kilometre) from neighbouring residential uses.
 - b. The roads to the Site are secluded and there is no pedestrian traffic.

- c. The nearest development is the Gursikh Temple, which is supportive of the proposed development. The Temple has not experienced any adverse effect from the operation of the Major Home Based Business since it began in 2011.
 - d. Three of the adjacent neighbours in the 60-metre notification radius provided letters in support of the proposed development.
 - e. No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
 - f. The outdoor parking/storage area is screened along the perimeter of the subject Site by fencing and trees.
 - g. In accordance with the Edmonton Energy and Technology Park Area Structure Plan, the subject Site will ultimately be rezoned Industrial, therefore it is unlikely that the Major Home Based Business will have a negative impact on neighbouring properties in the future. In any event, the development permit is limited to a five-year term and the circumstances must be reviewed in the event the Appellant seeks to renew it.
13. Based on the above, it is the opinion of the Board that the proposed discretionary Use, with the imposed conditions, is an appropriate Use on the subject Site and 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.
14. Any issues concerning the use of 34 Street by the semi-trucks to access the subject Site are beyond the jurisdiction of the Board.

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*,
 - 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*, R.S.A. 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.



Ms. K. Cherniawsky, Presidg Officer
Subdivision and Deieloprwnnt Appeal Board



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CONSTRUCTION



GREWAL FAMILY

TEMPORARY STORAGE

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801134STJITTNW
EDMONTON ALBERTA

SITEPLAN

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