



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 22, 2018
Project Number: 136343550-003
File Number: SDAB-D-18-184

Notice of Decision

- [1] On November 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 19, 2018**. The appeal concerned the decision of the Development Authority, issued on October 11, 2018, to refuse the following development:

**Install (1) Minor Digital Off-premises Freestanding Sign (Facing East
- HINGSTON INVESTMENTS | PATTISON).**

- [2] The subject property is on Plan 7884AH Blk 27 Lots 14-15, located at 7218 - 82 Avenue NW, within the (IB) Industrial Business Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – The Appellant’s additional written submission.

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*, RSA 2000, c M-26.

Summary of Hearing

- i) *Position of Mr. M. Caney, representing the Appellant, Pattison Outdoor Advertising ("Pattison")*

- [8] Mr. Caney read from his written submission (*Exhibit A*).
- [9] Mr. Caney noted that Pattison has had an off-premises advertising sign on the property since 2002. Prior to that, Hook Advertising had a sign on the property that was built in approximately 1997. The advertising sign was initially a paper billboard, but Pattison successfully received a permit in May 2013 from the Board to convert the structure to a Minor Digital Freestanding Off-premises Sign.
- [10] The permit for the Minor Digital Freestanding Off-premises Sign was due to expire in 2018, so Pattison applied to renew it, and were subsequently turned down by the Development Authority. As per the Development Authority's decision, it was noted that the digital sign did not meet the required setback distance from other freestanding off-premises signs in the area. Instead of 100 metres, the sign only had 68 metres of separation from a Freestanding Off-premises Sign located to the south-west of the site. It is the Development Officer's stance that allowing this variance would create a proliferation of off-premises signs in proximity to a residential area.
- [11] Mr. Caney believed that granting a variance to the separation distance between these two signs will meet the standard that has previously been set on this site, as well as other sites in the area. Additionally, he noted that if the Board were to allow this variance, it would 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.
- [12] Regarding the separation distance, Mr. Caney noted that when the digital sign was initially applied for in 2013, the Development Authority refused the application. Mr. Caney explained that Pattison subsequently appealed the decision, and was granted a development permit by the Board. He noted that you can find the Board's written decision from the 2013 appeal under Tab 1. It was noted in that decision that although there was another Off-premises sign located within the required separation distance, the south-western sign faces east, unlike the digital sign in question, which faces west. You can find this under Tab 1, Page 5, Point #3. At that time, the Board did not deem it to be a material issue in the approval of the sign and no further requests regarding this sign were made. These signs continue to face opposite directions, and have not changed siting or angle of view, as per the photos under Tab 2, Pages 1 - 3, which show an overhead view of the site, as well as photos for both east and westbound traffic.

- [13] Mr. Caney noted that Pattison is also in control of the south-western sign which is causing the separation distance issue. Pattison has applied for, and successfully received a permit renewal for the Freestanding Off-premises Sign that is located 68 metres south of the digital sign, as noted under Tab 3. After the digital sign was approved in April 2013, Pattison applied to renew the permit for this freestanding off-premises sign in November of 2017. Pattison was granted an approved permit by the City in March 2018. The City granted a variance on the separation distance between these two signs, lessening the required distance of 100 metres to the present distance of 68 metres, as noted under Tab 3, Page 2. As the City has approved this separation distance in one instance, it stands to reason that the same separation distance should be approved for the digital sign. It also demonstrates that there were no further concerns regarding any form of sign proliferation in the area.
- [14] The final concern that Mr. Caney addressed was the impact of these signs on the surrounding area. These two signs have existed in proximity of each other, in one form or another, for roughly 20 years. Over the life span of these signs, and in particular, the life span of the digital sign, no known complaints have been made. This supports the Board's previous written decision in May 2013, where it was stated that "It is the opinion of the Board, that the proposed development would 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" *TAB 1, PAGE 5, Point #6*. When the Board initially approved the digital sign, Mr. J. Murphy (the representation at that time) noted that by approving the digital sign, it would decrease proliferation, as the number of sign faces in the area had to be reduced in order to make the sign digital *TAB 1, Page 3, Point #6*.
- [15] It is Pattison's opinion that the requirement for the separation distance between the proposed development and the residential area is not in question given the IB Zoning. The closest residential area is across 82nd Avenue to the South and also North of the existing sign, and it will continue to be unaffected. The digital sign has also been built and oriented in such a way that the screen does not face any residentially zoned properties, as shown by the photos in Tab 4.
- [16] To summarize, Mr. Caney believed that permitting the sign in the current location, under the existing conditions, will not change or cause any negative impact on the neighbouring properties or residents.
- [17] Mr. Caney provided the following information in response to questions by the Board:
- a. He has discussed the proposed Sign with the adjacent neighbours.
 - b. He spoke to the property owner who did not have an issue with Pattison renewing the existing Sign.
 - c. There will be no change orientation of the digital sign or the sign across the street.
 - d. The residential area will not be able to see images on the sign.

e. He agrees to the suggested conditions by the Development Officer.

ii) *Position of the Development Officer, Ms. K. Mercier*

[18] The Development Authority did not appear at the hearing and the Board relied on Ms. Mercier's written submission.

Decision

[19] 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 development permit will expire on November 22, 2023.
2. The proposed Minor Digital Off-premises Sign shall comply in accordance to the approved plans submitted.
3. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a)).
4. Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada; (Reference Section 59.2(5)(b)).
5. Minor Digital Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(8)).
6. All Freestanding Signs, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12)).

7. The following conditions, in consultation with the Transportation department (Subdivision Planning), shall apply to the proposed Minor Digital Off-premises Sign, in accordance to Section 59.2.11:
 - a. That, should at any time, City Operations determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to City Operations.
 - b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
 - c. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

1. Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, City Operations will require a safety review of the sign prior to responding to the application.

[20] In granting the development the following variance to the *Edmonton Zoning Bylaw* (the *Bylaw*) is allowed:

1. The minimum required separation distance from Signs with Digital Copy greater than 8.0 square metres as per Schedule 59F.3(6)(e) is varied to allow a distance of 63 metres of separation, thereby decreasing the minimum allowed by 37 metres.

Reasons for Decision

[21] The proposed development, to install (1) Minor Digital Off-premises Freestanding Sign (Facing East - HINGSTON INVESTMENTS | PATTISON) is a Discretionary Use in the (IB) Industrial Business Zone.

[22] The Sign requires a variance to the minimum allowable separation distance between signs.

- [23] The Development Officer cited Schedule 59F.3(5)(d) of the *Bylaw* in the refusal and denied the application because the Sign is deficient in the proposed separation distance between signs by 37 metres. The Board notes that the correct section is Schedule 59F.3(6)(e).
- [24] The Minor Digital Sign has been in existence for five years with no known complaints over that period.
- [25] The Sign faces East along 82 Avenue where there is a commercial area and does not face the residential area, as noted by the Appellant. There will be no changes made to the existing Sign.
- [26] There is another Off-premises Freestanding Sign located within the required separation distance also owned by the Appellant; however, that Sign faces west, the opposite direction from the Sign that is currently before the Board. The West facing Sign has an approved permit until January 15, 2023.
- [27] The Board notes that a decision was previously issued by the Board regarding the subject Site on June 7th, 2013, granting the development by varying the minimum required separation distance between Digital Signs, subject to conditions.
- [28] The Board notes that it is not strictly bound by precedent and must consider each case individually on the merits based on the evidence and presentations presented at the time of the appeal.
- [29] The Board grants the variance for the following reasons.
- a. The Board determines based on the presentation that the deficiency of 37 metres in the separation distance will not impact the adjacent properties, specifically the residential neighbourhood in proximity to the Sign. This is largely due to the direction (east) that the existing Sign faces as well as the orientation of the sign face.
 - b. Based on the evidence provided, the proposed Sign is characteristic in the (IB) Industrial Business Zone and is in keeping with the industrial neighbourhood.
 - c. In the last five years, no concerns or objections have been made that the Appellant is aware of. A new five year time limit granted to this development will allow any new concerns to be addressed.
 - d. No changes, including siting or sign face orientation, are proposed for the Sign, which has existed on the property for an extended period of time.
 - e. Despite the minimum separation distance not being met between current Signs, each sign faces opposite directions and it is not possible to see both sign faces at once. Also, the Signs are separated by 82 Avenue, a major roadway, which greatly minimizes any appearance of proliferation of Signs in the area.

- [30] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [31] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ms. S. LaPerle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Mr. A. Bolstad; Mr. L. Pratt; Ms. E. Solez.

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. K. Mercier / Mr. H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: November 22, 2018
Project Number: 292950452-001
File Number: SDAB-D-18-185

Notice of Decision

- [1] On November 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 18, 2018**. The appeal concerned the decision of the Development Authority, issued on October 5, 2018, to approve the following development:

Operate a Major Home Based Business (Chiropractic services - DR. WILLIAM F. FARRELL CHIROPRACTIC & NEUROREHABILITATION SERVICES), Hours of operation between the hours of 9:30 AM - 6:30 PM from Monday to Friday. Maximum 12 visits per day by appointment only with no overlap, expires on October 5, 2023.

- [2] The subject property is on Plan 8621495 Blk 107 Lot 15, located at 118 – Rhatigan Road East NW, within the (RF1) Single Detached Residential Zone. The Rhatigan Ridge Neighbourhood Structure Plan and Riverbend Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions;
 - The Respondent’s written submissions; and
 - Two on-line responses.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Table regarding traffic, submitted by the Appellant.
 - Exhibit B – Written submission 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*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. N. Bayduza

- [8] Mr. Bayduza read from his written submission (*Exhibit B*).
- [9] He is an advocate for children and their safety. There are several children that live in their cul-de-sac.
- [10] His main concern is that the proposed business will create an increase in traffic that will impact the safety of their children.
- [11] In his opinion, condition No. 3 of the approved permit that states that “the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which is located” cannot be met.
- [12] In the Respondent’s submission, he states that the cul-de-sac is busy. He disagrees and feels the cul-de-sac is in a quiet neighbourhood.
- [13] He spoke to his neighbours who stated that they do not have an excess of vehicular trips to the cul-de-sac each day. This alone is indicative that the proposed Major Home Based Business will generate traffic in excess of what is characteristic in the RF1 Single Detached Residential Zone.
- [14] He referred to the tables in his written submission outlining how the excess traffic will have an impact in the neighbourhood (*Exhibit A*).
- [15] In his opinion, the business will create an increase in traffic between 17 percent and 54 percent. The mid-point of this increase is 37 percent which is a reasonable estimate of the expected increase in traffic. In his opinion, that is a contravention of condition No. 3.
- [16] In his opinion, the traffic associated with the subject site will have an increase of approximately 15 trips per week and between 45 and 60 trips weekly. That is an increase of 200 percent to 400 percent.

- [17] The Respondent stated that children should play in their back yards or a park. Mr. Bayduza stated that his family moved to this neighbourhood so their children could play street hockey in the quiet cul-de-sac or hide and seek in the greenspace in the middle of the roundabout.
- [18] Allowing the business to operate from the subject site will create a safety concern for children playing in the neighbourhood.
- [19] There are no sidewalks in the cul-de-sac and people are required to walk on the street to arrive to meet a neighbour or nearby businesses.
- [20] In his opinion, the incorrect Use definition has been applied to the permit and Chiropractic services falls within the Health Services Use.
- [21] Under section 7.4(26) of the *Edmonton Zoning Bylaw*, Health Services means:
- development used for the provision of physical and mental Health Services on an out-patient basis. Services may be of a preventive, diagnostic, treatment, therapeutic, rehabilitative, or counseling nature. Typical Uses include medical and dental offices, health clinics and counseling services, and medical Cannabis clinics and counseling services.
- [22] Health Services refers to outpatient care, not inpatient care. It is his contention that Chiropractic services does fall within this category. Health Services is defined as a specific use because of the aforementioned traffic and parking considerations that are associated with this type of commercial business use.
- [23] He questioned why the Respondent's Health Service applies to the existing business location, but not to the new proposed location. In his opinion, the proposed development is a Health Service Use and the business Use has not changed.
- [24] The website for the Respondent's business refers to patient care. The proposed business is for a Health Services Provider and Health Services is neither a Permitted nor Discretionary Use in a residential neighbourhood.
- [25] If the business is not for a Health Service, he would suggest that a condition be imposed to prevent the Respondent from using the term "Doctor" in any of his business dealings.
- [26] Mr. Bayduza has received 10 signatures from neighbouring property owners in opposition to the proposed development and concerns have been raised about the safety of their children.

- [27] Mr. Bayduza provided the following information in response to questions by the Board:
- a. The sale of the subject site is conditional on an approved development permit.
 - b. He spoke to the Respondent regarding the proposed development but did not find an alternative when addressing his concerns.
 - c. In his opinion, the proposed development should be located in a commercial property.
 - d. It is his opinion enforcing the parking conditions is difficult. However, Bylaw Enforcement will be called if the conditions are not met.
 - e. There are only a few spaces around the roundabout where vehicles can park.
 - f. He is concerned that there could be more than 12 patient visits to the site each day.
 - g. He is not concerned with traffic that is related to residential activities.
 - h. The hours of operation from 9:30 a.m. to 6:30 p.m. will be an issue creating an excess of traffic.
 - i. An approval for a period of five years will not address his concerns.
 - j. He believes a property in the cul-de-sac has an approved permit for a Minor Home Based Business with only one customer visit per day, which does not have an impact on neighbouring properties.
 - k. He would be willing to consider a compromise for the business to operate Monday to Wednesday until 4:00 p.m. and 12:00 p.m. on Thursday to accommodate their needs.
 - l. In his opinion, people do not want to buy a property in close proximity to a Major Home Based Business.

ii) Position of the Development Officer, Ms. C. Potter

- [28] The Development Authority did not appear at the hearing and the Board relied on Ms. Potter's written submission.

iii) Position of the Respondent, Dr. W. Farrell

- [29] Dr. Farrell is a pediatric neurorehabilitation consultant for Alberta Children's Services and his wife is a pediatric intensive care nurse at the Stollery Children's Hospital.

- [30] He is a practicing professional who works with children and the safety of children is important. He is concerned that children under nine years of age may be playing on the road.
- [31] Road safety is a shared responsibility between pedestrians and drivers. He referred to the map showing locations of pedestrian collisions from the City of Edmonton's transportation website. The majority of accidents happen at intersections or collector roadways.
- [32] He addressed the concern of children playing in the cul-de-sac and stated that all children should be supervised if playing in the cul-de-sac or the green space in the roundabout.
- [33] In his opinion, the proposed Major Home Based Business will generate one additional vehicle per hour to the cul-de-sac.
- [34] Conditions were added to the approved permit to restrict over lapping of patients with a maximum number of 12 per day. Most patient visits will be during the time period of when neighbouring children will be in school.
- [35] The nature of his work is complex and appointments are long.
- [36] He chose this property to operate his business as the property is easily accessible from Rhatigan Road.
- [37] He referred to a map of the area showing the proximity to the parking, the school, the church, and the Riverbend Community League where several vehicles travel each day. He does not believe an extra 12 cars will be noticeable.
- [38] There are five bus stops in the area with one being approximately 100 metres from the subject site. Some of his patients do not drive and take the bus to their appointment.
- [39] There is room for two vehicles to park on his driveway to comply with the parking conditions of the approved permit.
- [40] Patients will be reminded to not create any nuisance to ensure safety for the neighbours.
- [41] He was required to provide a community consultation with the permit application. He provided information to the neighbours outlining the proposed Major Home Based Business.
- [42] In his opinion, the information provided by the Appellant to the neighbours did not outline all the information for the Major Home Based Business.
- [43] One response was received in support of the Major Home Based Business and one was received in opposition as a result of the notice sent out by the City.

- [44] He has not discussed the proposed Major Home Based Business with the Appellant.
- [45] With regard to intensity, the nature of the work and the longer appointments will be better suited in a residential neighbourhood for his patients.
- [46] He would be agreeable to reduce the number of patients to 8 to 10 per day. There are also times when appointments are cancelled. In his opinion, the Major Home Based Business will serve the community.
- [47] He would be agreeable to operate the business starting at 9:30 a.m. to accommodate school traffic. However, reducing the hours in the evening will be an issue as parents that work will need an evening appointment for their children.
- [48] Major Home Based Businesses are listed as Discretionary Uses in all residential zones in the City of Edmonton. Neighbouring properties have the same opportunity to apply for a development permit if they choose.
- [49] In his opinion, the definition of Health Services does not refer to Chiropractic services, but rather the care of medical doctors. Inpatient and outpatient care would reference the time spent in a medical facility as compared to care received after leaving the facility. Medical offices and health clinics would also be associated with medical doctors.
- [50] Dr. Farrell provided the following information in response to questions by the Board:
- a. The house is a five level split providing distinct separation between the house and the business.
 - b. The lower level will be used for the Major Home Based Business that has a bathroom, a room used for an office, exercise and stretching rooms. There is no waiting room.
 - c. The condition of the approved permit that “the business must only operate in the main floor of the house” is incorrect. If the development permit is approved, this condition would need to be amended to the “...the lower floor of the house.”
 - d. There will be no employees. Patients will book appointments using an on-line booking system.
 - e. He currently sub leases a space in a commercial area and does not work out of a hospital. The subject site will be more suitable for children having access to a stretching room.
 - f. The initial community consultation was positive and he is concerned with what information was provided to the neighbours by the Appellant. Neighbouring property owners could refer to his website for more information about the business.

- g. He has two cars that can be parked in the garage. There are two parking spaces on the driveway where patients can park.
- h. Appointments will not overlap and there will be 15 minutes between each appointment.

iv) Position of a Property Owner and Realtor in Support of the Respondent

Ms. J. Dal Bello

- [51] Ms. Dal Bello currently owns the subject site.
- [52] She stated that the neighbour on the corner lot of the cul-de-sac is in support of the Major Home Based Business but could not attend.
- [53] Deliveries are made to the area regularly and vehicles often turn around in their cul-de-sac on a regular basis.
- [54] Parents supervise their children when they are playing in the cul-de-sac.
- [55] Parking is allowed on both sides of Rhatigan Road with bus stops in the area.

Mr. K. Rossiter

- [56] He is the Realtor for Ms. Dal Bello.
- [57] Customers will only pass one house after entering the cul-de-sac before reaching the subject site.
- [58] Determining if there will be a decrease in property values is not required when a property is sold.
- [59] He does not believe a business located in a cul-de-sac will have an impact on the neighbourhood.

v) Rebuttal of the Appellant, Mr. N. Bayduza

- [60] He welcomes the Respondents to the neighbourhood but is concerned with the Major Home Based Business.

- [61] He referred to the pedestrian accident map and stated that most accidents happen on major or arterial roads. It is reasonable to assume that the majority of these accidents take place in a commercial area.
- [62] In his opinion, operating a commercial business in a residential neighbourhood will increase pedestrian accidents.
- [63] In his opinion, he provided the neighbours with sufficient information when conducting community consultation.
- [64] In his opinion, the letters received in support by the Respondent were obtained prior to the notice of approval. Residents can change their mind regarding the proposed Major Home Based Business.
- [65] In his opinion, patients may be in a hurry when arriving or leaving their appointment which will increase safety concerns.
- [66] Mr. Bayduza provided the following information in response to questions by the Board:
- a. He confirmed that the signatures in opposition understood the operation of the business.
 - b. His immediate adjacent neighbour spoke to the Respondent about the business. That neighbour initially had a parking concern but rescinded their position after they read the condition regarding parking.
 - c. Mr. Bayduza moved to the neighbourhood in March 2018.
 - d. In his opinion, he should not have to take measures to increase safety in the neighbourhood.

Decision

- [67] The appeal is **DENIED** and the decision of the Development Authority is **VARIED**. The development is **GRANTED**, subject to the following **CONDITIONS**:
1. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
 2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).

3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
4. There shall be no non-resident employees or business partners working on-site.
- 5. There shall be no more than 9 visits associated with the business per day.**
6. Client visits must be by appointment only and appointments shall not overlap.
7. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
8. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
9. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.
10. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
11. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
12. Hours of operations must be between 9:30 AM and 6:30 PM from Monday to Friday.
- 13. The business must only operate on the lower floor (below grade) of the house.**
14. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on November 22, 2023.

Reasons for Decision

- [68] The proposed development, a Major Home Based Business, is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [69] The Board finds that the purposes and activities of the Chiropractic & Neurorehabilitation business with the attached conditions fall more within a Major Home Based Business Use than a Health Services Use.
- [70] The Respondent was willing to reduce the number of patient visits per day and the Board finds that reducing the number of visits to nine and prohibiting appointment overlap will mitigate the traffic intensity concerns of the Appellant.

- [71] The Major Home Based Business complies with all the regulations of the *Edmonton Zoning Bylaw*.
- [72] Based on the above, it is the opinion of the Board that the proposed development is reasonably compatible with the neighbourhood.

A handwritten signature in blue ink, appearing to read 'B. Gibson', is written over a faint, illegible stamp or background.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. Laperle; Mr. A. Bolstad; Mr. L. Pratt; Ms. E. Solez

CC:

Important Information for the Applicant/Appellant

1. This is not a Business Licence. A Business Licence must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 22, 2018
Project Number: 293886709-001
File Number: SDAB-D-18-186

Notice of Decision

- [1] On November 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 18, 2018**. The appeal concerned the decision of the Development Authority, issued on October 16, 2018, to refuse the following development:

Construct an Accessory Building (detached Garage (12.19m x 24.38m)).

- [2] The subject property is on Plan 9323292 Lot 11A, located at 18445 - 122 Avenue NW, within the DC2.369 Site Specific Development Control Provision. The Kinokamau Plains Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submissions with photographs and letters of support.

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*, RSA 2000, c M-26.
- [7] The Presiding Officer referenced section 685(4) of the *Municipal Government Act* which limits the authority of the Board.

[8] The Appellants were asked to explain how the Development Authority did not follow the directions of Council in refusing this development permit application. The Presiding Officer referenced an Alberta Court of Appeal Decision *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374 [*Garneau*] and explained that this Board cannot exercise any variance power that is not given to the Development Authority pursuant to the *Garneau* decision.

Summary of Hearing

i) Position of Ms. M. Martin, representing the Appellant, Luso International Design Inc., who was accompanied by Mr. B. Shibli, the property owner

[9] Mr. Shibli stated there are other buildings in the area that are similar to the proposed development.

[10] The Presiding Officer reiterated that they needed to explain how the Development Authority erred by not following the directions of Council.

[11] Mr. Shibli indicated that he could not determine if the Development Authority erred.

ii) Position of the Development Officer, Ms. S. Watts

[12] The Development Authority did not appear at the hearing and the Board relied on Ms. Watt's written submission.

Decision

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

Reasons for Decision

[14] Section 685(4)(b) (previously 641(4)(b)) of the *Municipal Government Act* states that:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds

that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

- [15] The proposed development, a detached Garage, is Accessory to a listed Use in the DC2.369 Site Specific Development Control Provision.
- [16] DC2.369.4.h states "An Accessory Building or Structure shall be in accordance with Section 61.3 of the Land Use Bylaw."
- [17] Section 61.3(2) of the *Land Use Bylaw 5996* states "an Accessory Building or Structure shall not exceed 3.7 m (12.0 ft.) nor one storey in Height, except as provided in Sections 61.4 and 61.5".
- [18] Section 11.6(2) of the *Land Use Bylaw 5996* states "except as otherwise provided in this Bylaw, there shall be no variance from maximum height, floor area ratio and density regulations, and the regulations specified in the Airport Protection Overlay".
- [19] The Development Authority determined that the proposed Height of the detached Garage is 4.29 metres which exceeds the maximum allowable Height of 3.7 metres by 0.59 metres and refused the Development Permit.
- [20] The Board finds that the Development Authority followed the directions of Council as the proposed development exceeds the maximum allowable Height and the Development Authority shall adhere to section 11.6(2).
- [21] The Board has considerable sympathy for the Appellants and acknowledges that there are similar detached Garages and community support in the Kinokamau Plains (DC2.369) Area. However, some of those Garages may have been approved prior to Alberta Court of Appeal decision *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374 [Garneau]. This Board cannot exercise any variance power that is not given to the Development Authority in the Bylaw, pursuant to *Garneau*. At paragraphs [39] and [40], the Court states:

- [39] The SDAB correctly concluded pursuant to section 641(4)(b) of the *Municipal Government Act* that the Development Officer did not follow the directions of Council when he failed to consider the specific variance power in the GARP to relax the RF3 "regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5". However, the SDAB also failed to follow the directions of Council in granting the development permit. First, it took into account the general variance power in section 11.5 of the Bylaw (mirrored by section 687(3)(d) of the *Municipal Government Act*), despite the clear prohibition in section 11.6(3) of the Bylaw. Second, it adopted an unreasonable interpretation of the scope of section 641 of the *Municipal Government Act* and the specific variance

power in section in the GARP to relax the RF3 regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5.

[40] In summary, the SDAB is entitled to substitute its decision for that of the Development Officer having found, correctly, that he failed to follow the direction of Council. **However, because this property is zoned direct control, section 641(4) applies and the SDAB must also follow the directions of Council.** In particular, the broad variance provisions of section 11(5) of the Bylaw (and section 687(3)(d) of the Municipal Government Act) are constrained by section 11.6(3) of the Bylaw. It provides that "where the issuance of a Development Permit for any use involves the exercise of any specified discretion ... to relax a regulation of a District or any other regulation of this Bylaw, he shall not permit any additional variance from that regulation pursuant to Section 11.5." Accordingly, the only permitted variances are specifically enumerated in the Development Criteria of the GARP, and clauses 3 and 5 of the Development Criteria in the GARP. That is, "relaxations that would assist in the achievement of the development criteria" that the development "shall be compatible with the scale, massing and siting of adjacent buildings ..." and "shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and the early 1920's detached housing in the area". **[Emphasis Added].**

[22] In conclusion, the Board determined that the Development Authority followed the directions of Council. Therefore, the appeal is dismissed.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle; Mr. A. Bolstad; Mr. L. Pratt; Ms. E. Solez.

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. S. Watts / Mr. A. Wen

Important Information for the Applicant/Appellant

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