



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 24, 2016
Project Number: 224125172-001
File Number: SDAB-D-16-280

Notice of Decision

[1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on October 17, 2016, made and passed the following motion:

“That the hearing for Project 224125172-001 be tabled to November 9 or 10, 2016, at the written request of the Appellant.”

[2] On November 9, 2016, the Board made and passed the following motion:

"That SDAB-D-16-205 be raised from the table.”

[3] On November 9, 2016, the Board heard an appeal that was filed on **October 8, 2016**. The appeal concerned the decision of the Development Authority, issued on September 23, 2016, to approve the following development:

**To operate a Major Home Based Business. (Administration office for
Drywall Contractor - Gilbert Drywall)**

[4] The subject property is on Plan 0524220 Blk 3 Lot 16, located at 1109 - McKinney Link NW, within the RSL Residential Small Lot Zone. The Hodgson Neighbourhood Area Structure Plan applies to the subject property.

[5] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- The Respondent’s written submissions; and
- Online response.

Preliminary Matters

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellants, Ms. H. Koosha & Mr. M. Ardakani*

- [9] They are not opposed to the approval of an Administration office for the proposed Major Home Based Business but do have concerns regarding the approval to allow the storage of one enclosed trailer associated with the business.
- [10] Mr. Ardakani referenced the definition for a Major Home Based Business contained in the agenda which states that 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.
- [11] It was his opinion that allowing the storage of the enclosed trailer on the Driveway does not comply with this requirement.
- [12] They also expressed traffic safety concerns because the residents of this property own five vehicles. Therefore, using the driveway to store the enclosed trailer eliminates the availability of one onsite parking space.
- [13] The garage has also been turned into a workshop/storage area which means that one of the five vehicles cannot be parked inside the garage.
- [14] This situation has already created heavy congestion on McKinney Link which is a linking street used by residents as a connecting route through the neighbourhood.
- [15] Parking four vehicles on the street creates a safety concern particularly when other neighbours park their vehicles on the street or have visitors.
- [16] The situation is worsened during the winter months when snow is plowed to the sides of the street, making them even narrower.

- [17] It was their opinion that the proposed Major Home Based Business does not comply with the regulation which states that it shall not generate pedestrian or vehicular traffic, or parking in excess of that which is characteristic of the Zone in which it is located.
- [18] In response to a question, Mr. Ardakani acknowledged that street parking is limited in the entire neighbourhood but it is more of a problem on McKinney Link because it experiences a higher traffic volume.
- [19] A school bus is also being parked on McKinney Link on a regular basis as well as a recreational vehicle.
- [20] He acknowledged that other property owners on the street own more than one vehicle. However, some of those additional vehicles can be parked on the driveways.
- ii) *Position of the Development Officer, Ms. M. Ziober*
- [21] This application was the result of a Development Compliance job from a complaint about an RV parked on the front lawn. However, this was during the Fort McMurray fire when home owners were given amnesty in order to provide housing for the residents of Fort McMurray.
- [22] During the inspection, the Development Compliance Officer found a small enclosed trailer parked on the driveway.
- [23] The home owner was contacted and asked to apply for a Development Permit for his business.
- [24] It was determined that no business related materials were being stored outside other than the enclosed trailer which was parked on the driveway and that the residence was not being used as a daily rendezvous point for employees.
- [25] Based on this information, the Development Permit application was approved with a variance to allow the enclosed trailer to be parked on the driveway.
- [26] It was her opinion that the approval would not negatively impact the neighbourhood because it was no different than having a company van parked at a residence.
- [27] In response to a question, Ms. Ziober indicated that she would not change her decision based on the concerns of the Appellants. The Development Authority is responsible for reviewing the use of a property, not the user. It is not possible to regulate how property owners use their garage or driveway parking.
- [28] The application was classified as a Major Home Based Business in order to provide notice of the approval to adjacent property owners.

- [29] The variance is very specific and only allows the enclosed trailer to be stored on the site. Complaints regarding any additional outdoor storage would be investigated separately.
- [30] The inspection conducted by Development Compliance confirmed that no other business related material was being stored outside. Storage is allowed inside the garage and the enclosed trailer that is parked on site.

iii) Position of the Respondent, Mr. P. Gilbert

- [31] The trailer is parked on the driveway until he takes it to a job site.
- [32] He has four children between the ages of 14 and 21, his daughters both have vehicles and he has a sports car parked inside the garage during the winter months. His daughters usually park their vehicles on the street.
- [33] Drywall is not stored inside the garage.
- [34] There are no employees who come to his house.
- [35] He and his family rent the house on an annual basis.
- [36] The enclosed trailer is not an overweight vehicle. He uses his truck to pull the enclosed trailer.
- [37] Business related activities only occur inside the garage or his trailer. Drywall, tools, boxes of mud and tape are stored inside the trailer.
- [38] In response to a question, Mr. Gilbert indicated that his business would not be viable if he was required to store his trailer off site because of the time constraints.

iv) Position of Affected Property Owners in Support of the Respondent

- [39] The Board heard from Ms. T. George who indicated that she co-owns 1109 McKinney Link and manages the property that is rented to Mr. Gilbert.
- [40] They also own two other properties on this street and reside a few blocks from the subject site.
- [41] She indicated that she has four children and expressed concern about the possibility that the City could limit the number of vehicles allowed per residence.
- [42] She lived at this residence for 8 years and acknowledged that there are parking issues on this street because residents of an adjacent cul-de-sac park on McKinney Link because of the lack of street parking on the cul-de-sac.

- [43] It was her opinion that this is a fact of life in these types of small lot neighbourhoods.
- [44] She is a very involved landlord who cares about the value of her property and the neighbourhood.
- [45] She conducts monthly inspections of the property and frequents this area at least once a week.
- [46] She has never witnessed any debris or construction occurring outside the house or the garage.
- [47] Mr. Gilbert stores some equipment inside the garage but she has never witnessed any wood working. It was her understanding that all of his work occurs off site.
- [48] Other residences on this street with adult children living at home have four or more vehicles, including one of the other properties that they manage that is a five car household.
- [49] She has never seen any employees on site.
- [50] Mr. Gilbert takes the trailer when he travels out of the city to work but sometimes leaves the trailer parked on the driveway for extended periods of time when he is working in the city.
- [51] In response to a question, she indicated that she entered into an informal rental agreement with Mr. Gilbert but it was her intent to have him reside in the house for the next 5 years until he retires back to Quebec.
- [52] Mr. Gilbert is an excellent tenant that keeps a meticulous home.

v) *Rebuttal of the Appellant*

- [53] Ms. Koosha reiterated her concern that the trailer has not moved from the driveway for the past year and that it is being used as a storage shed.
- [54] They questioned why an Administration office requires outdoor storage.
- [55] The Respondent owns two trucks that are parked at the site.
- [56] There are other residents in this neighbourhood who have multiple vehicles.
- [57] It was their opinion that Ms. George may have a conflict of interest because if the Development Permit is denied, Mr. Gilbert may move and her rental income would be compromised.

[58] The trailer is occupying a parking space on the driveway that could be used to accommodate one of the Respondent's vehicles to ease the on street parking.

[59] Ms. Koosha reiterated that she has witnessed the Respondent using the garage as a workshop and that items such as tires were being stored around the outside of the trailer.

Decision

[60] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS, with an amendment to Condition #5**:

1. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)
2. This Development Permit may be revoked or invalidated, at any time, if the Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes. This includes mechanical or electrical equipment used which creates external noise or interference with home electronic equipment in adjacent Dwellings. (Reference Section 75.2)
3. 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. (Reference Section 75.1)
4. This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business from this location.
5. There shall be no more than five business associated visits per day at the Dwelling. The business Use must be secondary to the residential Use of the building and, **excepting the permitted trailer**, no aspects of the business operations shall be detectable from outside the property. The number of non-resident employees or business partners working on-site shall not exceed two at any one time. (Reference Section 75.4) (**emphasis added**)
6. There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced. (Reference Section 75.2)

7. No person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.R.) exceeding 4 600 kg or more than one commercial vehicle having a maximum gross vehicle weight (G.V.W.R.) of 4 600 kg or less, for longer than reasonably necessary while loading or unloading such vehicle. (Reference Section 45.1)
8. The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighbourhood.
9. No commodity shall be displayed on the premises.
10. Clients visits must be by-appointment only and appointments shall not overlap with each other.
11. A new Development Permit must be obtained should the business change or expand.
12. All parking for the Home Based Business must be accommodated on site. Parking on the street in conjunction with this Home Based Business is not permitted.
13. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility when not in use. The Development Permit will be revoked if any commercial, industrial and overweight vehicles are parked/stored on the Residential Site.

Advisements:

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

Unless otherwise stated, all above references to section numbers refer to the authority under the exterior *Edmonton Zoning Bylaw* 12800.

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

1. Discretionary Use - Major Home Occupation is approved as a Discretionary Use (Section 115.3).
2. Outdoor Storage - allow the storage of one enclosed trailer associated with the business (*Edmonton Zoning Bylaw 12800*, Section 75.5).

Reasons for Decision

- [61] A Major Home Based Business is a Discretionary Use in the RSL Residential Small Lot Zone.
- [62] Based on the evidence provided by the property owner and the Respondent, the business use is secondary to the residential use of the property and does not change the residential character of the Dwelling or the neighbourhood.
- [63] The subject site is not being used as a daily rendezvous point for employees of the proposed business.
- [64] While the Board accepts the evidence provided and acknowledges that parking is a problem on this street, granting the variance to allow the storage of the enclosed trailer on the driveway will not exacerbate the problem.
- [65] Parking is an inherent problem in neighbourhoods comprised of small lots because street parking is limited and it is beyond the purview of the Board to regulate the number of vehicles allowed per residence.
- [66] Based on the evidence provided, there is no other outdoor storage occurring at the subject site and the Board is not convinced that there is a planning reason why the proposed development is not reasonably compatible with its surroundings.
- [67] The Board finds that the proposed Discretionary Use, with the conditions imposed, is reasonably compatible with surrounding development and will not unduly interfere with or affect the use, enjoyment or value of neighbouring properties.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. M. McCallum, Ms. E. Solez, Ms. S. LaPerle

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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