



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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

Date: November 16, 2017
Project Number: 117126002-001
File Number: SDAB-D-17-201

Notice of Decision

- [1] On November 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 6, 2017**. The appeal concerned the decision of the Development Authority to issue a Stop Order on September 25, 2017 to:

Cease the General Contractor Use including all components of the business and remove all related materials by October 23, 2017.

- [2] The subject property is on Plan 5216AP Blk 14, located at 751 - 167 Avenue NW, within the (AG) Agricultural Zone. The Horse Hill 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 Stop Order dated September 25, 2017;
 - A written submission from the Development Authority;
 - The Appellant’s written submissions including photographs; and
 - An on-line response from an affected property owner opposed to the appeal.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A PowerPoint presentation submitted by the Development Authority; and
 - Exhibit B – Photographs submitted by an affected property owner.

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. J. Nachai and his friend, Mr. D. Kutz:

[8] Mr. Nachai's family has owned the subject property since 1974. The land was annexed by the City in 1981 but they were allowed to continue to use the land as it had been used in the past. He and his sister took ownership of the property in April, 2017.

[9] In their opinion, they are being unfairly treated because there are other commercial businesses operating in this area that are zoned Agricultural. Mr. Nachai referenced numerous photographs to illustrate the state of these sites and to support his opinion that some of the uses are much more intense than what is occurring on the subject site.

[10] One commercial truck is operated from the site.

[11] Photographs were referenced to illustrate the operation of a new business in the area, including the operation of gravel trucks and heavy equipment as well as stock piles of gravel and other building materials. Gravel trucks use the gravel road and generate dust which is a safety concern for passing motorists. It was his understanding that this business has not received a permit from the City.

[12] Ongoing attempts are being made to clean up the site and many of the neighbours have complimented him on the cleanup and the improved appearance of the site. The majority of the items on the site were accumulated by his father over the years and removal takes time. Changes are being made to the elevation of the site and asphalt is being installed to improve drainage and reduce the amount of dust that is generated.

[13] There are 10 acreages located in this subdivision. Two properties operate gravel trucks, two properties operate a storage yard, and another property operates three and five ton trucks.

[14] Mr. Nachai wants to continue to operate the business from the subject site and he is willing to comply with conditions imposed by the City. Attempts have been made to reduce the dust and noise and most days he works between 8:00 a.m. and 4:30 p.m.

[15] The gravel truck and some of the other heavy equipment are also used to support a farming operation from two sites located in close proximity.

[16] Mr. Nachai and Mr. Kutz provided the following information in response to questions from the Board:

- a) Some of the photographs submitted by the Development Officer were taken in 2013 and do not accurately reflect the current state of the site.
- b) The photographs dated September, 2017 illustrate the significant clean up that has occurred.
- c) Some of the equipment and material that is currently on the site is being used to excavate and improve drainage on the site.
- d) An application for a home based business has not yet been made, but he plans on applying for a business licence.

ii) *Position of the Development Authority, Mr. J. Young:*

- [17] Mr. Young referenced a PowerPoint presentation, marked *Exhibit A*.
- [18] A Stop Order was issued because the site is being used as a General Contractor Service use, which is neither permitted nor discretionary in the AG Agricultural Zone.
- [19] Photographs were referenced to illustrate that there are large amounts of aggregate landscaping material and equipment located on the western portion of the site.
- [20] An initial complaint was received in November, 2011. Since 2014, Ward 4 has received 95 incidents of truck, contractor and industrial related complaints and enforcement of similar sites is ongoing.
- [21] Development Compliance initiated the complaint process in 2011 and in 2012 a Violation Notice was issued to remind the property owner of the subject site that the Development Permit for a Major Home Based Business had expired. They were advised to cease the operation within one year.
- [22] Photographs of the inspection that occurred on January 15, 2013 were referenced. Based on the results of the inspection, a Stop Order was issued with a compliance date of June 3, 2014. A follow up inspection conducted after the Stop Order was issued noted that some progress had been made but the site was still in non-compliance. Photographs of the inspection that occurred on September 22, 2017 were referenced to illustrate that material and equipment consistent with the use of a General Contractor Service was still being stored on the site.
- [23] The purpose of the AG Agricultural Zone is to conserve agricultural and rural uses. Single Detached Housing is a discretionary use for this site. General Contractor Services means:

development used for the provision of building construction, landscaping, concrete, electrical, excavation, drilling, heating, plumbing, paving, road construction, sewer or similar services of a construction nature which require on-site storage space for materials, construction equipment or vehicles normally associated with the contractor service. Any sales, display, office or technical support service areas shall be Accessory to the principal General Contractor Services Use only. This Use does not include Professional, Financial and Office Support Services.

[24] The use of the site is not consistent with the intent of the *Edmonton Zoning Bylaw* and the impacts are not desirable for the neighbourhood.

[25] Mr. Young provided the following information in response to questions from the Board:

- a) The inspection conducted in 2014 was a follow up to the Stop Order issued in 2013. Because the property owner took some steps to clean up the site, no further action was taken by the City at that time.
- b) Dozens of sites located in this area are currently being targeted by Bylaw Enforcement.
- c) The remedy to this situation involves cessation of the current use and the removal of all materials and equipment associated with a General Contractor Service.
- d) Some flexibility exists if the property owner requires more time to comply with the Stop Order.
- e) In his opinion, a rezoning application would not be successful because of the existing Horse Hill Area Structure Plan that is in effect.
- f) In his opinion, the Stop Order compliance deadline could be amended to January, 2018.
- g) Mr. Young advised that his personal telephone number is contained on the Stop Order and that no phone calls were ever received from the Appellant.

iii) *Position of an affected property owner, Mr. H. Barbaric:*

[26] Photographs marked *Exhibit B* were referenced to illustrate the subject site in relation to the rear yard of his property.

[27] Dust and dirt from the activities occurring on the subject site are an ongoing problem but have intensified over the spring and summer.

- [28] He acknowledged that the Appellant has tried to operate during reasonable hours. However, the dumping of materials and the operation of equipment generates excessive amounts of noise particularly because there is no sound barrier.
- [29] He has resided at this location since 2010 and has never filed a complaint against this property. However, the ongoing history of non-compliance with City regulations is a concern and is impacting the quality of life for residents in this area.
- [30] Photographs were referenced to illustrate the view of the subject site from his kitchen window. A photograph of the trees located adjacent to the site along 167 Avenue was referenced to support his opinion that they are too small to provide any type of buffer or screening. A photograph was also referenced to illustrate a “For Sale” sign located on materials in the yard which support the operation of a business.
- [31] Mr. Barbaric provided the following information in response to questions from the Board:
- a) Activity is occurring on the site on a daily basis and occasionally on weekends.
 - b) The roadway cannot support the movement of equipment and material. The stockpiling of dirt, rocks and crushed paving on the site creates an excessive amount of dust.
- iv) Rebuttal of the Appellant:*
- [32] Mr. Nachai indicated that the “For Sale” sign and the material illustrated in a photograph submitted by Mr. Barbaric have since been removed from the site.
- [33] Asphalt grindings are being installed at the site in an attempt to control the dust.
- [34] Mr. Kutz advised that a lot of road construction occurred in this area over the summer which increased truck traffic and could have also contributed to the amount of dust generated in this area. The only way to access Anthony Henday Drive from this area is from 167 Avenue or Meridian Street. There are also numerous farming operations in the area which can also contribute to the amount of dust being generated.
- [35] Residents have never approached them with any safety concerns or the operation of the business.
- [36] Mr. Nachai indicated that he would like to work with the City to find a solution. It is his preference to continue to operate as a one person business within conditions imposed regarding the use.

- [37] He indicated that numerous calls to the Development Compliance Officer have never been returned.
- [38] Mr. Nachai indicated that it would be difficult to comply with a January, 2018 compliance date because work would have to occur during the winter months.

Decision

- [39] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The Stop Order is **UPHELD**.

Reasons for Decision

- [40] The Stop Order was issued pursuant to section 645(1) of the *Municipal Government Act*. The Board heard evidence that a Development Compliance Officer had authority under the *Municipal Government Act* to issue a Stop Order and that the Development Authority had grounds for issuing the Stop Order because a General Contractor Service Use was being carried out on the site without a Development Permit.
- [41] Based on a review of both the verbal and photographic evidence provided, the Board finds that the Appellant has been conducting a General Contractor Service Use on the property by using the Site to store materials, construction equipment and vehicles normally associated with a General Contractor Service Use. In the (AG) Agricultural Zone, a General Contractor Use is neither a Permitted Use nor a Discretionary Use.
- [42] The Board notes that the Use of the subject property has not complied with the regulations of the *Edmonton Zoning Bylaw* for many years and that several Violation Notices and Stop Orders have been issued since 2011. The Appellant has known for a period of years that the Use of this Site as a General Contractor Service Use needed to stop.
- [43] The Board finds that since the compliance date of October 23, 2017 contained in the Stop Order that was issued on September 25, 2017, has passed, the illegal Use occurring on the property should be dealt with expeditiously.

[44] For the above reasons, the Board finds that the Stop Order was issued correctly.

A handwritten signature in blue ink, appearing to read "W. Tuttle".

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

Board members in attendance: Mr. B. Gibson, Ms. G. Harris, Ms. S. LaPerle, Mr. J. Wall

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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

Date: November 16, 2017
Project Number: 257580508-001
File Number: SDAB-D-17-202

Notice of Decision

- [1] On November 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 3, 2017**. The appeal concerned the decision of the Development Authority, issued on October 3, 2017, to refuse the following development:

To construct front and rear additions to a Single Detached House (Unenclosed Front Porch 1.52 metres by 2.63 metres, dining room extension 1.07 metres by 7.06 metres, rear attached Garage 7.01 metres by 8.56 metres, breezeway 6.40 metres by 12.12 metres), rear uncovered deck 4.27 metres by 9.93 metres, interior alterations on main floor, and Basement development (Not to be used as an additional Dwelling).

- [2] The subject property is on Plan 630MC Blk 33 Lot 8, located at 7712 - 139 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions, including community consultation; and
- An e-mail of support for the proposed development from an affected property owner.

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.

Summary of Hearing

i) Position of the Appellant, Mr. G. Bell, representing Alair Homes, Mr. A. Carreira, the property owner and Mr. S. Mielczarek, the Architect:

- [7] The immediate neighbours were contacted and brought into the development process to ensure that the proposed design did not impede on their properties and was characteristic of the architectural style of the neighbourhood.
- [8] The house was purchased as a non-conforming building, and because of the location of ground services, mature trees and the garage, the natural renovation was to extend the existing garage on the north side of the property.
- [9] Thirteen out of 15 houses on the same block have front and rear attached garages. This neighbourhood is predominately comprised of non-conforming houses with front and rear attached garages with architecture from the 1950s and onward.
- [10] The design and variances have been discussed with neighbours without any objection. Many expressed relief that the lot is not going to be subdivided and that the existing house will be preserved.
- [11] The house located on the immediately adjacent lot to the north does not comply with the side setback requirements. However, the property owners do not object to the variances required and have provided support for the proposed development.
- [12] This is a family community and many of the residents want to preserve the diverse architecture, including the prominent attached garages.
- [13] Mr. Bell and Mr. Carreira provided the following information in response to questions from the Board:
- a) The proposed design does not interfere with ground servicing and allows the retention of the mature trees on the lot. The proposed design also preserves private amenity space in the rear yard.
 - b) Construction has not yet started but there is some demolition work occurring on site.
 - c) An adequate turning radius has been provided to accommodate access to the garage.

- d) The proposed development will push the garage back and increase the size of the existing connection from the house to the garage.

[14] Mr. Mielczarek provided the following information in response to questions from the Board:

- a) The proposed development is under the maximum allowable site coverage requirements for this lot and provides adequate space for outdoor activities in the rear yard.
- b) The garages along the rear lane are offset. A letter of support was provided by the owner of the lot immediately across the lane.
- c) The proposed design, specifically the contour of the roofline, is contextually sensitive to the sun/shadow on adjacent properties.

ii) *Position of the Development Authority, Ms. S. Watts:*

[15] Ms. Watts provided a written submission and did not attend the hearing.

Decision

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

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

- a) Section 814.3(19) is waived to allow a rear attached Garage.
- b) The minimum required Rear Setback is 15.82 metres. The proposed Rear Setback is 0.8 metres and a deficiency of 15.02 metres is allowed. (Section 814.3(4)).
- c) The minimum required (north) Side Setback is 2.0 metres. The proposed Side Setback is 1.66 metres and a deficiency of 0.34 metres is allowed. (Section 814.3(3)(c)).

Reasons for Decision

[18] The proposed development, a Single Detached House, is a Permitted Use in the (RF1) Single Detached Residential Zone.

[19] The Board has granted the required variances to the *Edmonton Zoning Bylaw* for the following reasons:

- a) Thirteen of 15 houses on the same block have front and rear attached Garages and therefore the proposed development is characteristic of this neighbourhood.
- b) The existing House currently has an attached rear Garage. The proposed renovation will only extend the existing rear attached Garage towards the rear of the lot to provide additional living space.
- c) The proposed (north) Side Setback is greater than the 1.2 metre requirement for a subdivided lot and the House on the immediately adjacent lot to the north has a Side Setback that is less than 1.66 metres. The property owner to the north supports the proposed development.
- d) Even with the proposed renovations, the Principal Building complies with the maximum allowable Site Coverage requirements.
- e) Based on the evidence, the design is sensitive to sun/shadow impacts and will not negatively impact any of the adjacent property owners.
- f) Neighbouring property owners were consulted through the design process and have provided overwhelming support for the proposed development. The Board finds that the Appellant discussed the proposed development and the required variances with affected property owners to comply with the requirements of section 814.5(1) of the Mature Neighbourhood Overlay.

[20] Based on all of the above, the Board finds that the proposed development with the required variances is characteristic of the neighbourhood 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.



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

Board members in attendance: Mr. B. Gibson, Ms. G. Harris, Ms. S.LaPerle, Mr. J. Wall

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 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 the Sustainable Development Department, 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.