



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 24, 2018
Project Number: 289352542-001
File Number: SDAB-D-18-161

Notice of Decision

- [1] On October 10, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 14, 2018. The appeal concerned the decision of the Development Authority, issued on September 14, 2018, to refuse the following development:

To construct a Satellite Signal Receiving Antenna

- [2] The subject property is on Plan 7621409 Blk 20 Lot 2, located at 9333 - 37 AVENUE NW, within the IB Industrial Business Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - Written submission from Legal Counsel for the Appellant.

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 (the “*Municipal Government Act*”).

Summary of Hearing

- i) *Position of Mr. Miller, representing the Appellant, Virgin Technologies Inc., who was accompanied by Mr. Woo, Legal Counsel for the Appellant*

- [7] The satellite dish is located behind the building on the subject Site.
- [8] His client was not aware a development permit was required when the satellite dish was installed.
- [9] He referred to TAB A of his submission, Section 50.5(3) of the *Edmonton Zoning Bylaw*, and stated that the satellite dish is at the rear of the property and will not impact the adjacent properties. Landscaping around the satellite will be difficult as it is set on concrete and bordered by protective concrete barriers. The parking area in the rear of the building where the employees park is finished with asphalt.
- [10] He referred to TAB C of his submission showing the measurements from the satellite dish to the property lines and roadways.
- [11] He referred to TAB E of his submission, a Google map showing the location of the satellite dish and the distance to adjacent properties. The satellite dish does not impact any sight lines or create shading on adjacent properties.
- [12] The site is zoned IB Industrial Business Zone and the proposed development is characteristic of the neighbourhood.
- [13] The properties north and south of the subject Site cannot see the satellite dish. The property west of the subject Site may have a view of the satellite dish.
- [14] The satellite dish is not visible from the front of the building as shown in TAB E of his submission.
- [15] In his opinion, Section 50.5 of the *Edmonton Zoning Bylaw* as referenced in the Development Officer's written submission should not apply to the proposed development.
- [16] The satellite dish has existed in this location for 10 years with no known complaints from adjacent property owners or tenants.
- [17] They do not feel there is any way to beautify the area and feels the neighbours have no concern.
- [18] He referred to the Development Officer's written submission regarding City Policy Number C471C that regulates Telecommunications Facilities.

- [19] He stated that Virgin Technologies is not a Telecommunications Facility but provides satellite communication to clients and industries in remote locations.
- [20] TAB E of his submission shows smaller satellite dishes that are manufactured at the subject Site. The smaller satellite dishes are placed at remote locations where there is no cellular service and then communicate with the large satellite dish.
- [21] These types of satellite dishes are not purchased and used by individuals. They are used for clients or organizations working in areas where there is no other method of communication.
- [22] Virgin Technologies has operated since 1997 and the satellite dish has existed at the site since 2008. The City Policy Number: C471C was passed by City Council in 2013.
- [23] They are willing to comply with the regulations of the *Edmonton Zoning Bylaw* and City Policy Number: C471C.
- [24] Mr. Woo and Mr. Miller provided the following information in response to questions by the Board:
- a. There was a change in the Federal regulations and that is when they realized a permit was needed for the satellite dish.
 - b. The satellite dish acts as a transmitter and a receiver.
 - c. There is another business on the one side of the building as shown in the aerial photograph and they do not have an issue with the proposed development.
 - d. The small satellite dishes are manufactured within the facility.
 - e. Virgin Technologies also has an office in Texas.
 - f. They confirmed that the Height of the building is 7.5 metres.
 - g. Employees park on the asphalt parking lot behind the building. There are three concrete barriers bordering the large satellite dish at the rear of the building.
 - h. The satellite dish could not be located on the roof due to the size and weight of the satellite dish. There are small satellite dishes located on the roof of the building.
 - i. They agree to the conditions suggested by the Development Officer.

ii) *Position of the Development Officer, Mr. Welch*

[25] The Development Authority did not appear at the hearing and the Board relied on Mr. Welch's written submission.

Decision

[26] 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 as proposed by the Development Authority and reviewed by the Applicants:

1. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
2. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the *Edmonton Zoning Bylaw 12800*).

NOTES:

1. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
3. Signs require separate Development Applications.
4. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

5. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
6. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

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

1. The maximum allowable Height of 5.0 metres as per Section 50.5(1)(d) is varied to allow an excess of 5.9 metres, thereby increasing the maximum allowed Height to 10.9 metres.
2. The Board waives the landscaping requirement as per Section 50.5(3).

Reasons for Decision

[28] This application proposes to construct a Satellite Signal Receiving Antenna, Accessory to a Professional, Financial, and Office Support Services, which is a Permitted Use in the IB Industrial Business Zone. Pursuant to Section 50.1(2) of the *Edmonton Zoning Bylaw* Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued.

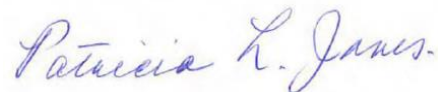
[29] The Board grants the Height variance for the following reasons:

- a. The development is located at the rear of the building and is not visible from the street.
- b. The development is only slightly higher than the Principal building.
- c. The development does not exceed the maximum allowable Height allowed under the (IB) Industrial Business Zone.
- d. This is an Industrial Site, therefore the development is characteristic of the neighbourhood.

[30] The Board waives the landscaping requirement for the following reasons:

- a. The development is situated on a cement pad and bordered on three sides with concrete barriers. The fourth side is the rear of the building.
- b. The adjacent employee parking lot is finished with asphalt.

- c. Landscaping around the satellite dish would be difficult and would be uncharacteristic in this (IB) Industrial Business Zone.
 - d. The Development Officer took no position on the Landscaping requirements as this is an Industrial area.
- [31] Other than Height and Landscaping, the proposed development complies with all of the other regulations, including Side and Rear Setbacks of the *Edmonton Zoning Bylaw*.
- [32] The proposed development complies with the General Purpose of (IB) Industrial Business Zone, which is “to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses. This Zone should normally be located on the periphery of industrial areas and adjacent to arterial or major collector roadways.”
- [33] Based on the evidence submitted, the satellite dish has existed for ten years with no known complaints.
- [34] 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, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. Harris; Mr. Fleming; Mr. Hobson

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Welch / Mr. 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: October 24, 2018
Project Number: 288097968-001
File Number: SDAB-D-18-162

Notice of Decision

- [1] On October 10, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 13, 2018. The appeal concerned the decision of the Development Authority, issued on August 16, 2018, to approve the following development:

Operate a Major Home Based Business (Administrative office and massage - NUAD THAI). *EXPIRES AUGUST 15, 2023*****

- [2] The subject property is on Plan 8122487 Blk 90 Lot 17, located at 206 – Heath Road NW, within the RF1 Single Detached Residential Zone. The Henderson Estates Neighbourhood Structure Plan and the 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:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions;
 - The Respondent’s written submissions; and
 - Email in opposition to the proposed development.

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 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Ms. Faucher

[7] The Appellant did not appear at the hearing and the Board relied on Ms. Faucher’s written submission.

ii) Position of the Development Officer, Ms. Potter

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

iii) Position of Ms. Arends, representing the Respondent, Ms. Davis

[9] Ms. Arends lives immediately adjacent to the subject Site.

[10] She has known Ms. Davis for 16 years.

[11] The Respondent became a massage therapist in 2016. At that time, she was required to construct a website so her instructors could provide a review as part of her studies.

[12] Even though Ms. Davis has had a website, the business has not been in operation. The proposed development for a Major Home Based Business is a new application.

[13] Ms. Davis works two weeks per month in Fort McMurray as a therapist. The other two weeks per month she is home in Edmonton and she would like to operate the massage business during that time.

[14] Her clientele would be friends, family, and occasionally clients that live in Edmonton but work in Fort McMurray.

[15] Ms. Davis does not intend to operate the Major Home Based Business in Edmonton on a full time basis.

[16] She would like to be able to serve more than one customer per day.

- [17] There are three rooms in the basement associated with the business. One room is used for regular massage, a larger room used for Thai massage, and one room is a bathroom with a sauna for clients to use.
- [18] Limiting the hours of operation will be difficult as many of the clients work full time and cannot come during regular 9 – 5 business hours.
- [19] Ms. Davis will maintain her home with the extra income from the massage business.
- [20] Ms. Arends provided the following information in response to questions by the Board:
- a. Heath Road is a thorough-fare road that connects Riverbend Road and 23 Avenue.
 - b. Heath Road is not a busy road, there are no parks along the street, and there is a bus route in the neighbourhood.
 - c. One vehicle coming to the subject Site every few hours will not be different than what currently takes place in the neighbourhood.
 - d. Ms. Arends confirmed that there will be no employees of the Major Home Based Business. The business will supplement Ms. Davis's current employment.
 - e. In Ms. Arends' opinion, operating the business from 9:00 a.m. to 3:00 p.m., Monday to Friday will be difficult as most of her clients work full time.
 - f. Ms. Arends confirmed that Ms. Davis does not intend to offer workshops out of her home.

Decision

- [21] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority, 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. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
5. If there are visits associated with the business the number shall not exceed the number applied for with this application.
6. Clients visit 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 operation not to exceed the hours between 9 AM and 6 PM.
13. 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 October 25, 2023.


Notes:

1. 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 such as the *Municipal Government Act*, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).
2. This Development Permit is not a Business License.

Reasons for Decision

- [22] The Respondent made application for and received a Development Permit with conditions to operate a Major Home Based Business (administration office and massage), which is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [23] A neighbouring property owner appealed the approval of the Development Permit, who believed the proposed business would be more appropriately located in a Commercial or Industrial Zone. Further, the Appellant suggested further restrictions on the conditions already imposed on the Development Permit.
- [24] Major and Minor Home Based Business are allowed in residential areas as long as they will not change the character of the residence or adversely affect the neighbourhood. As such, the Board does not agree with the Appellant who states that this type of business should only be in a commercial or industrial area, The Board finds that Home Based Businesses are acceptable in Residential areas as stated above.
- [25] The Board notes that more than one room in the basement of this residence will be available for clients as the Appellant will offer different types of massage. The Board finds that having three rooms in the basement will not change the look and character of the development as a Single Family Dwelling.
- [26] The Board notes that Heath Road is a thoroughfare, but not an overly busy road. Therefore, vehicles entering or exiting from a property on this street is not an uncommon occurrence, and the Board deems that up to five additional vehicles per day will not have any impact on traffic in this area.
- [27] The Appellant also suggested that the hours of operation for the massage part of the business be curtailed. The Board finds that this would impose an unnecessary hardship on the Home Based Business and deems that the hours of 9 to 6 are acceptable.
- [28] This permit is for a Major Home Based Business that can be operated every day even though the Board heard that at present the Respondent will be working in Fort MacMurray for two weeks each month.
- [29] The Board is satisfied that compliance with all of the conditions in the Development Permit as proposed, and noted above, will ensure that the proposed development is reasonably compatible with surrounding uses and will not unduly interfere with the amenities of the neighbourhood nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

- [30] The Board notes that the Development Permit has been approved for a period of five years. This will allow sufficient time for neighbouring property owners to assess the impact of the proposed development and report any violations of the conditions to Bylaw Enforcement. This will result in appropriate actions, which could include the cancellation of the approved Development Permit.



Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. Harris; Mr. Fleming; Mr. Hobson

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

Important Information for the Applicant/Appellant

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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.
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