EDMONTON
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*Subdivision & Development Appeal Board*

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Date: October 21, 2016
Project Number: 187054079-007
File Number: SDAB-D-16-225

## Notice of Decision

[1] This appeal, which was filed on August 23, 2016, concerns the decision of the Development Authority, issued on August 18, 2016, to refuse the following development:

> Change the use of a portion of a Professional, Financial and Office Support Service to an Indoor Participant Recreation Service (gymnastics/dance/karate).

[2] The subject property is on Plan 1524442 Blk 20 Lot 87, located at 3564 - Allan Drive SW, within the DC1 Direct Development Control Provision (Bylaw 17411 – Area"A"). The Ambleside Neighbourhood Structure Plan and Windermere Area Structure Plan apply to the subject property.

## September 14, 2016 Hearing

[3] On September 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on August 23, 2016.

[4] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with proposed plans, memorandum from Transportation Planning, and the refused Development Permit;
- Appellant's PowerPoint presentation;
- Development Officer's written submissions, dated August 30, 2016; and
- One email response in opposition to the development.

### Preliminary Matter

[5] At the outset of the appeal hearing, Board Member Mr. J. Kindrake disclosed that he knew Mr. Allsopp, an Architect accompanying the Appellant, from 20 years ago when he was completing some renovation work on his home. Since then, he has had no contact

with Mr. Allsopp. The parties in attendance expressed 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**

[8] The Presiding Officer drew attention to Section 641(4)(b) of the *Municipal Government Act*, which states:

> 641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
>
> …
>
> (b) 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.

[9] As the subject development is located in a direct control district, the Presiding Officer explained that pursuant to Section 641(4)(b), the Board can substitute its decision for that of the Development Authority's only if it can be shown that the Development Authority did not follow the directions of council. The Presiding Officer requested that parties focus their submissions accordingly.

*i) Position of the Appellant, The Little Gym*

[10] The Appellant was represented by Mr. J. Chang, who was accompanied by Mr. B. Allsopp, Architect.

[11] As a father of two young children, Mr. Chang explained that in his experience, extracurricular classes for various sports and activities are often full. According to City census results, there is a high population of young children in Southwest Edmonton, indicating that there is market support for services such as those of the proposed development.

[12] Mr. Chang provided background information about The Little Gym, which is a franchise founded in the United States. Its programs are geared toward helping children from four months to 12 years old develop their motor skills. On weekdays, he intends to run one class every 45 minutes, from 9:00 a.m. to 5:00 p.m., with a maximum of 18 children per class (average of 12 per class), and three staff members. He anticipates that peak demand will be in the evenings and on weekends.

[13] Based on the number of anticipated staff and students, he submitted that a parking variance would be justified. First, there is a bus stop located just next to the proposed development. Second, the area has a well-developed network of walkways, making it possible for parents to walk their children to the facility. Third, since most of the surrounding businesses operate normal business hours from 9:00 a.m. to 5:00 p.m., The Little Gym's peak hours will not negatively impact the surrounding businesses.

[14] In support, Mr. Chang referred to two parking studies he had conducted of comparable developments, one in Southwest Edmonton, and the other in Southeast Edmonton. It was his submission that both these developments had a negligible impact upon off-street parking during their hours of operation.

[15] Upon questioning by the Board, Mr. Chang confirmed that the Development Officer did not have the parking studies when he conducted his review.

[16] When asked to provide submissions with respect to how the Development Officer failed to follow the directions of council, Mr. Allsopp questioned the appropriateness of classifying the subject development as an Indoor Participant Recreation Services. He explained that there is nothing in the *Edmonton Zoning Bylaw* that contemplates the exact use as proposed.

[17] However, upon questioning by the Board, Mr. Allsopp was unable to provide an alternative, more appropriate Use Class. At one point, he appeared to suggest Child Care Services and Commercial Schools, but provided no submissions in this regard, and indeed, expressed the view that Indoor Participant Recreation Services is likely the most appropriate categorization.

[18] Mr. Allsopp then suggested that the parking calculations used by the Development Officer may not be the most appropriate. It was the Appellant's view that, with class sizes averaging between 10 to 12 children and a maximum of three on-site staff members, only 12 to 15 parking spaces will be required at any given time. The 30 parking spaces as determined by the Development Authority seemed excessive.

[19] The Board noted that the parking information in the Appellant's presentation had not been available to the Development Officer when he made his decision. The Board questioned whether the Appellant wished to seek an adjournment so that the new information could be provided to the Development Officer for further review. The Appellant reserved the right to make such request after he had heard the Development Officer's oral submissions.

*ii) Position of the Development Officer, Mr. P. Belzile*

[20] Mr. Belzile stated that if the Appellant requested an adjournment, he would be prepared to recirculate the matter to Urban Transportation. In his view, the Appellant had presented sufficient new information that could potentially result in a different decision.

[21] With respect to the appropriate Use Class, Mr. Belzile explained that the Development Authority's policy with respect to developments such as the one proposed, which may not fit squarely into the established Use Classes, is to apply the most conservative Use Class. In this case, the proposed development contemplates activities such as gymnastics. Using the conservative approach, he felt that Indoor Participant Recreation Services was the most appropriate Use Class for the proposed development.

*iii) Rebuttal of the Appellant*

[22] The Appellant requested that this appeal hearing be tabled so a parking justification study could be submitted to the Development Officer for circulation to Urban Transportation for reconsideration. After conferring with the Board Officer, all parties agreed that they or their representative would be available on either October 12, 2016 or October 13, 2016.

**Decision**

[23] A motion was made and carried that this matter be adjourned to October 12 or 13, 2016.

**<u>October 12, 2016 Hearing</u>**

**Summary of Hearing**

[24] On October 12, 2016, the Subdivision and Development Appeal Board passed a motion to raise this matter from the table.

[25] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with proposed plans, memorandum from Transportation Planning, and the refused Development Permit;
- Appellant's PowerPoint presentation received September 14, 2016, and revised presentation received October 12, 2016;
- Development Officer's written submissions, dated August 30, 2016;
- Revised memorandum from Transportation Planning received October 12, 2016;
- Addendum to the Appellant's Commercial Purchase Contract; and
- One email response in opposition to the development.

*i) Position of the Appellant, The Little Gym*

[26] The Appellant was represented by Mr. J. Chang, who was accompanied by Mr. B. Allsopp, Architect.

[27] Mr. Chang reviewed the information previously submitted at the adjourned hearing held on September 14, 2016.

[28] Mr. Chang explained that there are 34 parking spaces provided on-Site, and that the proposed development has been allotted 10 of these parking spaces. The Appellant subsequently obtained an agreement for an additional five dedicated drop-off/pickup spaces, resulting in a total of 15 spaces being provided.

[29] Although the Development Officer determined that 30 parking spaces are required, Mr. Chang submitted that 15 spaces will be sufficient for the purposes of the proposed business. Their business plan anticipates that the busiest times for pick-up/drop-off will be during transitions between classes. To ensure that parking impacts are mitigated during these transitions, they will spread out classes so that there will be at least 15 to 20 minutes between each class. During questioning, Mr. Chang confirmed that special events such as birthday parties will occur only on weekends or after regular hours of operation.

[30] Mr. Chang also drew attention to the revised memorandum from Transportation Planning, which "noted that the 15 allocated stalls for the unit could meet this demand [of 12 to 15 stalls for a maximum class size of 16 to 20 students] based on the applicant's information."

*ii) Position of the Development Authority*

[31] The Development Authority was represented by Mr. I. Welch, as Mr. Belzile was unable to attend the hearing.

Development Authority's Discretionary Powers in a Direct Control District

[32] Upon questioning by the Board, Mr. Welch explained that the Development Authority recognizes a limited right of variance for developments within a direct control district. Since a direct control district is still subject to the overall land use bylaw, the Development Authority still retains its variance powers under Section 11 of the *Edmonton Zoning Bylaw*. However, this variance power is subject to the express direction of City Council as set out in the provisions of the respective direct control district.

[33] In this case, the subject development is within the DC1 Site Specific Development Control Provision passed by City Council under Bylaw 17411 ("DC1 (17411)"). In such instances, Council has determined that the existing regulations under the *Edmonton Zoning Bylaw* are insufficient to meet the policies and goals of the attached statutory plan, and therefore, it is necessary to zone the Site specifically as a DC1 direct control district. The Development Authority must therefore make its decision based on Council's direction, as reflected in DC1 (17411).

Increase in Intensity of Use

[34] Mr. Welch drew attention to Section 1 of DC1 (17411), which states, in part, that the General Purpose of this direct control district is "To accommodate low intensity commercial and residential mixed-use development." He recognized that the term, "low intensity", has no concrete definition, but in this case, where the development proposes an increase in intensity, there is conflict with the General Purpose.

[35] In both the original and the revised memorandum from Transportation Planning, the primary concern was the impact of parking variances on existing on-street parking stresses. In his view, the crux of the matter is not the Use itself, but that the proposed development converts a Use of moderate intensity (Professional, Financial and Office Support Services) to a Use of much higher intensity (Indoor Participant Recreation Services). In effect, the parking requirement has potentially tripled.

Section 54 Schedule 1 Parking Requirements

[36] Mr. Welch clarified that the original Site plan for the entire building was approved for 34 off-street parking spaces. It was his understanding that the Development Officer who refused the application, Mr. Belzile, had determined that 56 off-street parking spaces would be required to accommodate all the Uses for the Site, including the proposed Indoor Participant Recreation Service. Mr. Welch clarified that the Site does not currently have a variance of 22 off-street parking spaces. The variance is required only if the proposed Indoor Participant Recreation Service was to be approved.

[37] Upon questioning by the Board about the parking requirements under Section 54, Mr. Welch acknowledged that the current one-size-fits-all system may be too stringent and may not work for all applicants. However, there is also a recognition that parking standards are required to ensure that all applicants are treated fairly. Discussions are underway for possible reforms or changes to the requirements.

[38] Mr. Welch stressed that one of the key principles of planning development is to regulate uses and not users, particularly since development permits run with the land. In this case, if the permit is approved and the tenant moves out, the approved permit remains and the landlord could obtain a new tenant. This new tenant could operate an even higher intensity Indoor Participant Recreation Service, such as a CrossFit gym or other adult gym.

*iii) Rebuttal of the Appellant*

[39] The Appellant clarified that the development permit for the building was first approved for the development of a Professional, Financial and Office Support Services Use building. The Site provided 34 parking spaces when 36 were required, and the Development Authority granted the required parking space variance.

[40] Of the eight units available in the building, three are occupied for office space, and one for a private commercial school. Two units are for the proposed Indoor Participant Recreation Service. The remaining two units remain unoccupied.

[41] It was his view that the building is not suitable for an adult gym, as there are no provisions for locker room or shower amenities. The low ceiling is also not ideal for an adult gym.

[42] The Appellant has spoken with City Councilor Henderson's office to seek clarification about the purpose of DC1 (17411). Through the subsequent conversations, it was the Appellant's understanding that the direct control district was intended to provide for a wide variety of Uses, and to ensure pedestrian-oriented, high-quality developments with certain architectural features.

[43] Upon questioning by the Board, the Appellant explained that the purchase agreements for these lots prevent buyers from pursuing rezoning, as the developer had been keen to maintain control of the architectural features. Preventing buyers from rezoning had been a way to maintain that control.

**Decision**

[44] Appeal DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

**Reasons for Decision**

[45] The proposed development is for an Indoor Participant Recreation Service, which is a Listed Use in the DC1 (17411) Site Specific Development Control Provision.

The Board's Discretionary Powers in Respect of Direct Control Districts

[46] Because the proposed development is in a direct control district, the discretion of the Board is constrained by the provisions of Section 641(4)(b) of the *Municipal Government Act*, which reads:

> 641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
>
> …
> (b) 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.

[47] The Board must first determine if the Development Officer followed the directions of Council when he refused to grant a development permit for the proposed development. Only if the Development Officer failed to follow the directions of Council may the Board substitute its decision for that of the Development Authority's.

The Proposed Development is an Indoor Participant Recreation Service

[48] Section 4(i) of DC1(17411) states that "Parking shall be in accordance with Section 54, Schedule 1." The use of the word "shall" is mandatory, and the Development Officer was therefore required to determine parking requirements according to Section 54, Schedule 1 of the underlying land use bylaw.

[49] Section 54, Schedule 1 sets out the parking requirements for various Use classes. The Development Officer indicated that in his view, Indoor Participant Recreation Service was the most appropriate characterization of the subject development, and although the Appellant raised the issue that there were perhaps alternative applicable Use classes, he ultimately acknowledged that Indoor Participant Recreation Service was likely the most appropriate.

[50] Section 7.8(4) defines Indoor Participant Recreation Services as follows:

> …development providing facilities within an enclosed building for sports and active recreation where patrons are predominantly participants and any spectators are incidental and attend on a non-recurring basis. Typical Uses include athletic clubs; health and fitness clubs; curling, roller skating and hockey rinks; swimming pools; rifle and pistol ranges, bowling alleys and racquet clubs.

[51] Throughout the hearing, the Board heard that the proposed business intends to run programs geared toward helping children from four months to 12 years old develop their motor skills through organized activities such as dance, gymnastics and karate. The Board finds that such a development can be defined as an Indoor Participant Recreation Service, as it provides "active recreation where patrons are predominantly participants".

The Development Officer Followed the Directions of Council

[52] The proposed Indoor Participant Recreation Service occupies two units in an eight unit building. A Development Permit was initially issued for the construction of this building as a Professional, Financial and Office Support Services Use building. This permit granted a parking variance for two parking spaces, as 36 off-street parking spaces were required under the *Edmonton Zoning Bylaw*, while the Site could only provide 34 off-street parking spaces.

[53] With the proposed Indoor Participant Recreation Service, the Site now requires a total of 56 off-street parking spaces according to Section 54, Schedule 1, resulting in a deficiency of 22 off-street parking spaces.

[54] Throughout the course of the hearing, the Board heard that the Development Officer sought to exercise his discretionary powers under Section 54.2(e), which provides as follows:

> Where the applicant for a Development Permit can demonstrate through a vehicular parking demand study prepared and submitted with respect to the proposed development, that by virtue of the use, character, or location of the proposed development, and its relationship to public transit facilities and other available parking facilities, the parking requirement for the proposed development is less than any minimum or more than any maximum set out in the Parking Schedule, the Development Officer may allow a reduction from the minimum or an increase from the maximum in the number of parking spaces. The Development Officer shall submit the demand study to Transportation Services for analysis, and the proposed reduction or increase may be approved by the Development Officer with the advice of Transportation Services.

[55] Pursuant to Section 54.2(2), the Development Officer requested that the applicant submit a parking justification form, which was circulated to Transportation Planning and Engineering for advice. The initial memorandum expressed concerns about the parking deficiencies.

[56] Subsequently, the Appellant provided new information at a hearing of this Board on September 14, 2016, and the Development Officer agreed to an adjournment so that this new information could be recirculated to Transportation Planning and Engineering. The revised memorandum, though acknowledging that the Site may be able to accommodate the proposed Use, still maintained that it had concerns about the change of Use, noting "that there is limited on-street parking available on Allan Drive adjacent to the site."

[57] Based partially on this advice from Transportation Planning and Engineering, the Development Officer determined that a variance to the parking requirements under Section 54, Schedule 1 should not be granted, and refused the development.

[58] The Board finds that the Development Officer followed the directions of Council and exercised his discretionary powers in a reasonable manner when he refused to grant the variance.

[59] Section 4(i) of DC1 (17411) directs that the parking requirements under Section 54, Schedule 1 of the *Edmonton Zoning Bylaw* be applied to developments within this direct control district. The Development Officer abided by this direction.

[60] Section 54.2(e) provides the Development Officer with discretion to vary parking requirements with the advice of Transportation Services. The Development Officer sought such advice, and determined that a parking variance would not be appropriate.

[61] For the above reasons, the Board finds that the Development Authority did follow the directions of Council, and therefore, this Board does not have the authority to substitute a different decision for that of the development authority's. The decision of the Development Officer stands, and the development is refused.

[62] In the alternative, even if the Board had the authority to exercise its discretionary powers for this development, it would not do so because the proposed development would result in an increase of 20 additional off-street parking spaces due to the intensity of use associated with Indoor Participant Recreation Services. As on-street parking is limited, patrons of this service would inevitably make use of parking spaces on the rest of the Site, which would impact the available parking to neighbouring businesses.

[63] The Board also notes that the Site was initially approved for a Professional, Financial and Office Support Service Use building with 34 parking spaces. While the Board sympathizes with the community's need for the proposed child recreation services, it finds that the Site was intended neither for the proposed Use, nor the proposed increase in intensity. As such, the Board would deny the appeal and confirm the decision of the Development Authority.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance
B. Gibson; M. Jummun; J. Kindrake; A. Bolstad

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

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Date: October 21, 2016
Project Number: 220310877-007
File Number: SDAB-D-16-249

**Notice of Decision**

[1] On October 12, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on September 15, 2016. The appeal concerned the decision of the Development Authority, issued on September 14, 2016 to refuse the following development:

> Construct interior alterations to an Accessory Building (Garage Suite: revise layout of bedrooms and flip direction of staircase)

[2] The subject property is on Plan 5765Q Blk 5 Lot 5, located at 10747 - 75 Avenue NW, within the RF3 Small Scale Infill Development 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:

- Copy of the Development Permit application with proposed plans, attachments, and the refused Development Permit;
- Registered Mail receipt confirming delivery of the refusal decision on September 19, 2016;
- Development Officer's written submissions, dated October 3, 2016; and
- Appellant's appeal package, including a position letter from the Appellant home owner, various photographs, and correspondence with the Community League and neighbouring property owners.

**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, Apollo Sunrooms*

[7] The Appellant was represented by Mr. A. Banack. He was accompanied by Ms. S. Glazerman from Apollo Sunrooms, and Ms. M. Wilkinson, the property owner.

[8] The Appellant explained that although the development was initially approved by a different Development Officer, the property owner subsequently wished to revise the Garage Suite layout. Upon review of the revised plans, the Development Officer refused the application. According to the Appellant, the following are the main differences between the refused revised plans and the original approved plans:

a) The staircase has been reversed, such that the kitchen is separated from the above Grade Garage Suite, and access to the staircase and the second floor suite is available only via the Garage parking area.
b) The Garage Suite was previously accessible via an entrance doorway located on the northern section of the kitchen. The revised plans have removed this doorway, such that entry to the Garage Suite is available only through the Garage parking area.
c) The revised plans propose an additional TV connection and gas heater in the Garage parking area.

[9] Next to the proposed Garage Suite, there is currently a parking pad that provides for tandem parking for two vehicles. The lot is approximately 33 feet wide, and the Garage is 16 feet wide. The proposed development will provide for the additional required parking space within the Garage. Upon questioning by the Board, the Appellant explained that vehicular access into the Garage will be provided by way of a sliding door that provides for a tighter seal, and maximizes overhead space by eliminating the need for a traditional overhead Garage door.

[10] The Appellant submitted that the proposed changes would make the second floor area more useable, eliminating unnecessary hallway space. The removal of the access from the kitchen's north wall provides for a larger, multifunction area suitable both for living and for eating. It would enable the Appellant to add more cupboards to the kitchen.

[11] Upon questioning by the Board, the Appellant confirmed that the entire Garage would be rented to the owner's daughter as a single unit. The owner explained that the additional parking space in the Garage is not actually needed; however, she purchased a Toyota Matrix to park in the Garage parking space under the mistaken belief that a vehicle was necessary to have the development approved. The owner clarified that there is no space in the existing principal Dwelling for her daughter, as the second storey rooms are rented out to out-of-town cancer treatment patients.

[12] The Appellant disagreed with the Development Officer's characterization of the proposed Garage Suite as a second Single Detached House. In his view, there is no difference

between access to a principal Dwelling through an attached Garage, and access to a Garage Suite through the Garage parking area.

[13] The Board drew attention to the definition of a Garage Suite under Section 7.2(3) of the *Edmonton Zoning Bylaw*. Upon questioning by the Board, the Appellant acknowledged that the proposed development does not appear to meet some of the criteria for a Garage Suite as defined in the Bylaw.

*ii) Position of the Development Officer, Mr. K. Yeung*

[14] Mr. Yeung explained that the original plans were approved by a different Development Officer. Mr. Yeung subsequently inherited the file and issued the refusal decision for the revised plans.

[15] The Board noted that the original approved plans appeared to contemplate a Garage Suite where the Accessory Dwelling is located both above Grade and at Grade, which does not appear to meet the definition of a Garage Suite. Furthermore, the definition of a Garage under Section 6.1(42) is that of a building that is "used primarily for the storage of motor vehicles". Upon questioning by the Board, and with reference to Section 11.3(2), Mr. Yeung confirmed that the previous Development Officer granted a Class B Development Permit based on the original plans, notwithstanding nonconformance with the prescribed use.

[16] Upon questioning by the Board, Mr. Yeung confirmed that the revised layout will result in 58.34 square metres of liveable space, which excludes the required Garage parking area. A Garden Suite would not require a Garage, but an additional off-street parking space would still be needed. Furthermore, a Garden Suite requires a minimum of 50.0 square metres with a maximum of 12% Site Coverage. It was his view that a Garden Suite would not be suitable for this Site, nor could the proposed two-Storey Garage Suite be characterized as a Garden Suite, as Garden Suites cannot be two Storeys.

[17] Should the Board allow the appeal and grant the development, Mr. Yeung would request that the Board condition the permit such that the third parking space in the Garage be maintained and dedicated for parking, and not be used for living space. This would entail that the electrical plans be revised to remove both the television cable outlet and the furnace. He would also prefer that the second Storey be directly accessible from the kitchen, and that external access be provided directly to the Garage Suite, separate from the Garage parking area.

*iii) Rebuttal of the Appellant*

[18] The Appellant explained that it was his understanding that the original plans were approved by the previous Development Officer because the plans were "close enough" to the definition of a Garage Suite.

[19] The Appellant would prefer to not build a Garden Suite, as it would present three difficulties related to Site Coverage, suite size, and parking: a Garden Suite on this Site would result in a larger footprint with less liveable space, and the requirement for an additional off-street parking space cannot be met.

**Decision**

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

**Reasons for Decision**

[21] The proposed development is for a Garage Suite, which is a Discretionary Use in the RF3 Small Scale Infill Development Zone.

[22] Section 140.4(19)(a) states: "The maximum number of Dwellings per Site shall be as follows: a maximum of one Single Detached Dwelling per Site, and, where the provisions of this Bylaw are met, up to one Secondary Suite, Garage Suite, or Garden Suite". The Development Authority determined that the proposed development, which consists of revised plans different from those that were approved by a previous, different Development Officer, would result in a second Single Detached House located on the same lot. The proposed development would therefore contravene Section 140.4(19)(a) of the *Edmonton Zoning Bylaw*.

[23] The Appellant submitted that the proposed development is a Garage Suite, and not a Single Detached House. Section 7.2(3) defines a Garage Suite as follows:

> an Accessory Dwelling located above a detached Garage (above Grade); or a single-storey Accessory Dwelling attached to the side or rear of, a detached Garage (at Grade). A Garage Suite is Accessory to a building in which the principal Use is Single Detached Housing. A Garage Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal Dwelling located on the Site. A Garage Suite has an entrance separate from the vehicle entrance to the detached Garage, either from a common indoor landing or directly from the exterior of the structure. This Use Class does not include Garden Suites, Secondary Suites, Blatchford Lane Suites, or Blatchford Accessory Suites.

[24] During questioning, the Appellant acknowledged that there are aspects of the proposed plans that do not meet this Use class definition, namely:

a) The proposed Accessory Dwelling is located both above the detached Garage, *and* to the side of the Garage.

b) The proposed Garage Suite does not have an entrance that is separate from the vehicle entrance to the detached Garage.

[25] The Board reviewed the revised plans, and finds that the proposed Accessory Dwelling has a kitchen located at Grade at the side of the Garage, while the two bedrooms and one bathroom are located above Grade on the second Storey. This contravenes the definition of Garage Suite under Section 7.2(3), which does not permit an Accessory Dwelling to be located both at Grade and above Grade.

[26] The Board also compared the refused revised plans with the original plans that were approved by the previous Development Officer. The Board finds that the revised plans have removed the separate entrance from the north-facing wall. As a result, access to the proposed Garage Suite is only available from the vehicle entrance of the Garage, which also does not meet the definition of Garage Suite under Section 7.2(3).

[27] Section 687(3)(d) of the *Municipal Government Act* provides the Board with the authority to grant variances to the *Edmonton Zoning Bylaw* where "the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, ***and*** *the proposed development conforms with the use prescribed for that land or building in the land use bylaw."* [emphasis added]

[28] Since the proposed development does not conform with the use class definition of a Garage Suite as set out under Section 7.2(3) of the land use bylaw, the Board cannot grant the required variance to Section 140.4(19)(a).

[29] For the above reasons, the appeal is denied and the development is refused.

[30] The Board notes that in refusing this development, the original approval decision by the previous Development Officer still stands.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance
M. Young; M. Jummun; J. Kindrake; A. Bolstad

**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 5th Floor, 10250 – 101 Street, Edmonton.

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