



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 2, 2017
Project Number: 246614001-005
File Number: SDAB-D-17-187

Notice of Decision

[17] On October 18, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 21, 2017**. The appeal concerned the decision of the Development Authority, issued on September 8, 2017, to refuse the following development:

Retain a vehicular access from 89 Avenue NW to the Front Yard of a Single Detached House.

[18] The subject property is on Plan 276MC Blk 54 Lot 25, located at 6816 - 89 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[19] 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 plan, and the refused Development Permit;
- The Development Officer’s written submission; and
- The Appellant’s written submission including photographs and a community consultation.

[20] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – A summary of the Appellant’s verbal presentation;
- Exhibit B – Photographs of the subject site submitted by the Appellant; and
- Exhibit C – A Real Property Report dated June 27, 2010.

Preliminary Matters

[21] 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.

- [22] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [23] 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. W. Krause:*

- [24] He and his wife purchased the property in April, 2017 and made the decision to renovate the main floor and add a legal basement suite. Subsequently, an application to construct a legal basement suite and to convert the attached garage into living space was made.
- [25] They have also proposed to build a double car garage at the rear of the property to meet the required number of parking spaces for the house and basement suite.

The Board advised the Appellant that the current *Edmonton Zoning Bylaw* requires a minimum of one parking space for single detached housing and one parking space for a secondary suite.

- [26] Many delays in the permit process have resulted in a loss of time and money. He was informed to apply for a development permit and a variance to retain vehicular access to the front parking area that was originally grandfathered. This development permit application was refused on September 8, 2017. In his opinion, the permit process was intentionally delayed until after amendments were made to the *Edmonton Zoning Bylaw* on September 1, 2017.
- [27] He was only advised yesterday that community consultation was required and should be provided at the hearing in order to prevent a postponement of the hearing.
- [28] The entire process has taken 25 weeks.
- [29] Photographs were submitted as *Exhibit A* to illustrate the existing front driveway and the garage that existed before the renovations were completed as well as the crosswalk that is located in close proximity to the driveway. The photographs illustrate that vehicles are parked on or in front of the crosswalk, causing a blind spot that creates a safety risk for children attending the adjacent school.
- [30] In his opinion, retaining the driveway for vehicle parking will increase the “no parking” zone adjacent to the crosswalk because drivers will not block an occupied driveway.
- [31] If the attached garage had not been renovated the driveway would have been grandfathered.

[32] Removing the driveway and replacing the curb cut will result in a significant financial hardship.

[33] Mr. Krause provided the following information in response to questions from the Board:

- a) He obtained 29 signatures of support from neighbouring property owners.
- b) There are two parking spaces available inside the garage and one additional space in the rear yard.
- c) A shipping container is currently parked on the front driveway to store tools and materials during the renovation process.
- d) It is his intention to use the front driveway as an additional parking space for a vehicle, a boat or a camping trailer.
- e) The front driveway has existed since the house was built in 1964.
- f) A house that is located in close proximity has converted the attached garage to living space and it still has front driveway access.
- g) There are other houses in the area that have front driveway access but he could not confirm if development permits had been issued. In his opinion, allowing the front driveway access is characteristic of this neighbourhood.
- h) He is extremely careful when using the front driveway because of the close proximity to the crosswalk.
- i) It was clarified that four of the 20 houses on the block face have front drive access, three of the driveways lead to attached front garages and one does not.

ii) *Position of the Development Authority, Mr. B. Liang*

[18] Mr. Liang provided a written submission and did not attend the hearing.

Decision

[19] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** with the following **CONDITIONS**:

1. Parking is not allowed in the Front Yard, pursuant to section 54.2(2)(e) of the *Edmonton Zoning Bylaw*.

2. A form or mix of Landscaping, such as *trees, shrubs, plants, lawns, ornamental plantings*; or decorative hardsurfacing elements such as *bricks, pavers, shale, or crushed rocks* shall be provided on the existing monolithic concrete portion of the Front Yard.

Reasons for Decision

- [20] The proposed development is Accessory to Single Detached Housing which is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [21] The Board has imposed a condition that parking is not allowed in the Front Yard. Based on the evidence provided a detached Garage will be constructed in the Rear Yard, which will provide the minimum on-site parking requirements of the *Edmonton Zoning Bylaw* for the Principal Dwelling and the Secondary Suite.
- [22] The existing Driveway is in close proximity to a crosswalk used by children attending the nearby school. The condition not to allow vehicle parking on the driveway addresses the safety concerns noted by the Appellant.
- [23] The Appellant submitted a petition of support containing 29 signatures from affected property owners who reside within the 60-metre notification radius. Therefore, the Board finds that the Appellant complied with the Community Consultation requirements pursuant to section 814.5 of the *Edmonton Zoning Bylaw*. The Board acknowledges the significant support from the neighbourhood; however, the Board finds that front Driveway is not characteristic of the neighbourhood for the following reason:
- a. The Board notes that only four houses on this block face have existing front Driveway access and of those four, only one Driveway does not lead directly to a Garage. Therefore, the Board finds that allowing a variance to retain the existing front Driveway access, which does not lead to a Garage, is not characteristic of the neighbourhood.
- [24] Based on the above, it is the opinion of the Board, with the condition imposed that the existing front concrete pad with a restriction on vehicle access and parking, 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. V. Laberge, Mr. J. Wall, Ms. M. McCallum, Ms. G. Harris

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.



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Date: November 2, 2017
Project Number: 257819394-001
File Number: SDAB-D-17-188

Notice of Decision

- [1] On October 18, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 25, 2017**. The appeal concerned the decision of the Development Authority, issued on September 21, 2017, to refuse the following development:

Continue to operate a Restaurant with an Accessory Minor Amusement Establishment (two billiard tables), and to operate a Bar and Neighbourhood Pub and a Nightclub with 160 Seats and 250 square metres of Public Space (Vida Bar and Grill).

- [2] The subject property is on Plan 4128HW Blk 38 Lot 12, located at 12225 - 118 Avenue NW, within the (CB1) Low Intensity Business Zone. The West Ingle Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions and letters of support.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellants, Ms. J. Mira, Mr. G. Mira and Mr. A. Mira, representing the Appellant, Vida Bar and Grill:*

- [7] Ms. Mira reviewed the development permit application process that was undertaken to add a Nightclub component to their business on Friday and Saturday nights to a previously approved development permit to operate a Restaurant with an Accessory Minor Amusement Establishment and a Bar and Neighbourhood Pub. Drawings were submitted to identify the location of the DJ booth.
- [8] They contacted neighbours within the 60-metre notification radius and advised them of their application to add the Nightclub component. They received some very positive feedback and some neighbours provided letters of support. The owner of the immediately adjacent business offered their parking lot on Friday and Saturday nights if additional parking was required.
- [9] The Development Officer refused the development permit after one noise complaint was received from a neighbour. This was the result of loud music being played in a vehicle that was parked in their parking lot after hours. However, because this occurred after hours, they had no control over vehicles parking on their property.
- [10] They talked with the neighbour who filed the complaint assuring them that if this incident had occurred during business hours, security would have addressed the problem.
- [11] All of the neighbouring business owners agree that the neighbourhood has improved since the subject building has been occupied.
- [12] This business is family run and children are allowed at all times. Live music and dancing are allowed on Friday and Saturday nights. The Edmonton Police Service has visited the premises on many occasions and has never identified any problems.
- [13] Every precaution will be undertaken to ensure that the neighbours are not negatively affected by their business. Changes have already been made to lower the bass sound and volume of the music as well as point all of the speakers toward the 118 Avenue side of the building away from the residential properties located to the south.
- [14] It was noted that neither of the two adjacent businesses or the closest residential property located to the south had any concerns regarding the noise.
- [15] They are prepared to comply with the recommended conditions provided by the Development Officer.

[16] Ms. Mira provided the following information in response to questions from the Board:

- a) The Nightclub component opened on May 5, 2017, only on Friday and Saturday nights.
- b) Saturday nights are usually busier with an average of 150 occupants.
- c) The business is open until approximately 2:00 a.m.
- d) A full menu is offered at all times.
- e) With regard to the difference between a Nightclub Use and a Bar and Neighbourhood Pub Use, Ms. Mira indicated that a Bar and Neighbourhood Pub is allowed to play music either from a live band or a juke box, customers can dance at their tables, and operating hours are the same.
- f) In her opinion, the excess of 10 square metres of Public Space calculated by the Development Officer is the result of the inclusion of the waiting area just inside the main entrance. There are two tables located in that area for customers to wait if the Restaurant is busy but it is never used as part of the Nightclub Use.
- g) The diagram that was used to calculate the Public Space was referenced to illustrate the location of four tables that are moved to provide space for dancing. This space is approximately 10 feet by 10 feet in size. One table is removed from the dining area to allow space for the DJ or live band to set up.
- h) There is no stage or designated dance floor and it was her estimation that the area provided for entertainment is less than 10 percent of the Floor Area of the building which is approximately 5,200 square feet in size.
- i) The two existing billiard tables were used by Boston Pizza and Royal Pizza who previously occupied the building and they were included in the purchase agreement.
- j) They were initially told that based on the size of the building, the maximum occupancy could be 220 people.
- k) None of the submitted diagrams include measurements for a designated entertainment area.

ii) *Position of Affected Property Owners in Support of the Appellant, Mr. J. Oliveri, property owner of the subject Site:*

[17] Mr. Oliveri has owned the property for 15 or 20 years. He reiterated that the billiard tables have always been in the building and were used by the two previous Restaurants that operated from this location.

[18] He acknowledged that there were many undesirable people on the site when the building was vacant.

[19] In his opinion the inclusion of the Nightclub Use would not impact the approved Use of the building as a Restaurant and Bar and Neighbourhood Pub.

iii) Position of the Development Authority, Ms. S. Buccino:

[20] Ms. Buccino provided written submissions and did not attend the hearing.

iv) Position of an Affected Property Owner in opposition to the Appellant, Ms. D. Supernault:

[21] Ms. Supernault resides south of a Pawn Shop which is adjacent to Vida Bar and Grill.

[22] She does not object to the operation of a Bar and Neighbourhood Pub and welcomes this addition to the neighbourhood. However, she and several neighbours have some concerns regarding the excessive noise generated by the music that carries outside of the building after 3:00 a.m.

[23] The complaint about the noise was filed by someone who resides in one of the rental properties located south of the building.

[24] Ms. Supernault provided the following information in response to questions from the Board:

- a) People often have loud arguments in the parking lot outside the building.
- b) The Pawn Shop was operating from this location when she purchased her property seven years ago.
- c) In her opinion a Nightclub is perceived differently than a Bar and Neighbourhood Pub, because it is usually busier and has a different clientele.
- d) Her main concern is the noise and she indicated that the intensity of the use of this building has changed over the summer months.

v) Rebuttal of the Appellants:

[25] They reiterated that they have made changes to lower the bass of the volume of the music to address the noise concerns.

- [26] The business never operates past 2:00 a.m. or 2:15 a.m. but they do not have any control over the activities that may occur in the parking lot after hours. Security is on site during operating hours to address any problems inside the building or in the parking lot. Last call for alcohol is at 2:00 a.m.
- [27] Ms. Mira agreed with Ms. Supernault that a Nightclub is perceived differently than a Bar and Neighbourhood Pub. However, this is a family run restaurant where people come to have a meal, enjoy some entertainment and dance.
- [28] The building will be soundproofed to ensure that music is not emanating from the building. Their goal is to get along with all of their neighbours so that they will visit the restaurant for a meal and enjoy some entertainment.
- [29] Security is on site to ensure that no one is drinking excessively and customers are cut off if it is deemed appropriate.

Decision

- [30] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The Nightclub Use is only approved on Fridays and Saturdays until 2:00 a.m.;
 2. NO parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Vehicular parking, loading, storage and trash collection areas shall be located to the rear of sides of the principal building and shall be screened from view from any adjacent Sites, public roadways or a LRT line in accordance with the provisions of Section 55.5 of this Bylaw. If the rear or sides of a Site are used for parking, an outdoor service or display area or both, and abut a Residential Zone or a Lane serving a Residential Zone, such areas shall be screened in accordance with the provisions of subsection 55.4 of this Bylaw. (Reference Section 330.4.5);
 3. 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);
 4. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1(1)(c));

5. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

Reasons for Decision

- [31] Restaurants, Minor Amusement Establishments, Bars and Neighbourhood Pubs and Nightclubs are all Discretionary Uses in the (CB1) Low Intensity Business Zone.
- [32] The Board reviewed the main floor plan that was used by the Development Officer to calculate the total Public Space. The Appellant provided evidence that the lobby and reception area identified on the plan are, in practice, not used in the operation of the proposed Nightclub Use and therefore should not have been included in the calculation of Public Space.
- [33] The Board accepts the evidence provided by the Appellant that this area should not have been included in the calculation of Public Space and therefore finds that the proposed Nightclub Use does not exceed the maximum allowed 240 square metres of Public Space and is therefore a listed Discretionary Use in the (CB1) Low Intensity Business Zone.
- [34] The Board accepts the submission of the Appellants that the proposed Use may be that of a Nightclub, however the actual Use is closer to a Bar and Neighbourhood Pub or Restaurant. For instance, full meals are served during all hours of operation.
- [35] The building has operated as a Restaurant, Minor Amusement Establishment and a Bar and Neighbourhood Pub since 1989. The Board finds that the addition of the Nightclub Use is reasonably compatible with surrounding Uses for the following reasons:
- a) A condition has been imposed to only allow the Nightclub Use on Fridays and Saturdays, which will ensure that the business continues to operate primarily as it has for many years as a Restaurant, Minor Amusement Establishment and a Bar and Neighbourhood Pub.
 - b) The Board acknowledges the noise concerns of some of the neighbours, including one neighbour who attended the hearing but notes that the Appellant has taken steps to address these concerns by reducing the music volume and changing the location of speakers and has further plans to provide more sound proofing in the building.
 - c) The Appellant undertook some community consultation and provided written support from two adjacent business owners as well as the most affected neighbour who resides in the residential zone south of the subject site. The Board also notes that support was provided by the Inglewood Community League.
 - d) The proposed development meets all of the regulations of the (CB1) Low Intensity Business Zone and the *Edmonton Zoning Bylaw*.

[36] Based on the above, the Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood.

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

Board members in attendance: Mr. V. Laberge, Mr. J. Wall, Ms. M. McCallum, Ms. G. Harris

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SDAB-D-17-189

Project Number: 246478239-001

To construct two Commercial Use buildings (Building 1: Health Services in CRU's 101, 102, 201 - 203; General Retail in CRU's 103 - 108; P.F.O. in CRU's 111 - 115, 204, 205; Restaurant (119 square metres of Public Space) in CRU 109; Specialty Food Service (119 square metres of Public Space) in CRU 110; Building 2: P.F.O. in CRU 116-0, General Retail in CRU 117-0, Restaurant (88 square metres of Public Space) in CRU 118-0) with an underground parkade and demolish an existing building was **TABLED** to November 22, 2017