



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 7, 2016
Project Number: 225663935-001
File Number: SDAB-D-16-234

Notice of Decision

- [1] On September 22, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 24, 2016**. The appeal concerned the decision of the Development Authority, issued on August 12, 2016, to approve the following development:

To operate a Major Home Based Business (Hair salon - HIGH MAINTENANCE)

- [2] The subject property is on Plan 8121520 Blk 101 Lot 67, located at 14860 - 35 Street NW, within the RF1 Single Detached Residential Zone.
- [3] The following documents were received prior to hearing and form part of the record:
- Copy of the Development Permit application and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - The Respondent’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – aerial picture

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 (the "*Municipal Government Act*").

Summary of Hearing

i) Position of the Appellant, Ms. D. Duchesneau

[8] The Appellant provided correspondence to the Board that she was unable to attend the hearing. She advised the Board to proceed with the hearing on the basis of her written submissions. The Board read the Appellant's submissions and will consider it in her absence. The Appellant had concerns with the proposed hours of operation of the business, traffic, parking, and use of signage.

ii) Position of the Respondent, Ms. R. Lament

[9] The Respondent read her written submission.

I am writing this letter to help support my application for a home based business. I am for the most part a stay at home mother. I have 2 small children, a 19 month old and a 5 year old. I am working out of the home to help contribute to family the best way I can. I have to work around my children's schedule with daycare and schooling. So working out of a salon at this point is just not an option. I operate by referral and appointment only which means I maximize my time. I plan to operate as much as I can throughout the day to maximize daycare/school times. I do not wish to cause problems for my neighbors. I am willing to work towards a solution in which all parties are mutually satisfied. I am aware of the parking issue and have made a concerted effort to have all of my clients park on my driveway. I physically go out to make sure everyone is parked in the proper area. I have also coached all my clients to be aware of the children that may be playing in the vicinity. I plan to conduct all my business in an orderly and discreet manner and cause no undue stress to anyone. I love my neighbourhood and only want to add to it I believe my application should be approved because I plan to be a responsible business owner adhering to all the listed conditions, and I will work diligently to make parking and people a non-issue.

[10] The Respondent has two driveway parking spaces and 1 parking space in the cul-de-sac. Both she and her husband park in the garage.

[11] She clarified that at most she would have a maximum of 2 clients at 1 time.

[12] For the most part, she would like to see 3 clients per day, but would like the opportunity to see up to 5 clients per day. Currently, there are no time limitations on her permit.

[13] Occasionally she has a sales representative come to her house on Thursdays mornings.

- [14] Upon reviewing the Development Officer's pictures, she advised the Board that the red car belonged to her mom and the blue van to her babysitter. The babysitter is sometimes there during the week or on a Saturday. The trailer shown on the pictures belongs to the Appellant. The Appellant has 4 vehicles and always park on their property.
- [15] There is usually parking available in the cul-de-sac. As submitted in her letters, one neighbour is open to allowing the use of her driveway or in front of her house for parking. A formal arrangement has not been made for this.
- [16] She believes the signage issue is a valid concern. She is trying to balance her livelihood with any traffic or parking concerns.
- [17] She confirmed she is the only hairdresser at her house at this time.
- [18] She will not take clients Sundays or Mondays. She would like to start working by 10 a.m. and the latest she would take a client is 8:30 p.m. She reiterated that for the most part, she would like to see 3 clients per day, but would like the opportunity to see up to 5 clients per day.
- [19] She does not believe a complaint was filed against her business. She applied for a permit, which was appealed by her neighbour. She had only started operating in advance to see if this was a viable business prior to applying for permits. Her intention was always to have the necessary permits in place if she continued to operate from her home.

iii) Position of the Development Officer, Mr. G. Robinson

- [20] The Development Officer confirmed there is no complaint on file. With this type of Home Based Business, he will usually schedule an inspection. Pictures from this inspection are included in his submission.
- [21] On the basis of the Respondent's submission, he stated the following conditions would be fair:
- (a) Condition #2 amended to say "There shall be no exterior display or advertisement."
 - (b) Condition #6 amended to say "Client visits by appointment only and there shall be no more than 2 clients at one time."
 - (c) Condition #13 could be added to say "There shall be no client visits after 9:00 p.m."
 - (d) Condition #14 could be added to say "No client visits on Sundays or Mondays."

- [22] The Board asked the Development Officer how impactful a sign the size of a piece of paper is. The Development Officer stated this regulation is included to prohibit people from displaying a large lit sign, but a small identification sign would be suitable, as it prevents people from attending the wrong house.
- [23] The Development Officer has no concerns about the parking and at most the business would require 2 extra parking spaces which are available on the parking pad.
- [24] The Development Officer would not consider the babysitter an employee because he/she would not be working for the business. Also, the definition of household pursuant to Section 6.1(51) of the *Edmonton Zoning Bylaw* does not include a babysitter.
- [25] The Development Officer drew the Board's attention to Condition #11, which states the Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Detail changes. Thus this permit may be cancelled at any time for a violation which would lead to a cancellation of the Business License and Violation Notices being issued.
- [26] The Development Officer agreed that the Board cannot place any conditions on the permit regarding snow removal as those are bylaw enforcement issues.
- [27] The Development Officer stated that Condition #10 states that all parking must be accommodated on site. A Major Home Based Business requires two parking spaces for the dwelling and 1 for the business for a total of 3 parking spaces. This site has 2 garage spaces and 2 driveway spaces, for a total of 4 parking spaces.
- [28] The Development Officer confirmed the property is close to a Row Housing development and submitted Exhibit A, an aerial image of that development, to show access to those units is through an internal driveway. On-street parking is public property which can be used by anyone. However, on-street parking cannot count towards the minimum requirements of the business. There are no parking controls in this neighbourhood. The Development Officer stated the Compliance Officer observed no parking issues during his site visit. The Development Officer has no issue regarding the width of the lot. Individuals cannot park on the street if obstructing someone's driveway

Decision

- [29] The appeal is ALLOWED IN PART and the decision of the Development Authority is VARIED. The development is GRANTED as approved by the Development Authority with the following changes/additions to the Conditions:
5. The number of visits associated with the business shall not exceed 20 per week.

6. Clients visit must be by-appointment only and there shall be no more than 2 clients at one time.
11. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details or this Board decision changes (Section 17.2).
12. 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 7, 2021.
13. There shall be no client visits after 9:00 p.m.
14. There shall be no client visits on Sundays or Mondays.

The development is 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 centimetres (8 inches) x 30.5 centimetres (12 inches) 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. The number of non-resident employees or business partners working on-site shall not exceed two at any one time (Section 75.4).
5. **CHANGED AS NOTED ABOVE**
6. **CHANGED AS NOTED ABOVE**
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. CHANGED AS NOTED ABOVE

12. CHANGED AS NOTED ABOVE

13. ADDED AS NOTED ABOVE

14. ADDED AS NOTED ABOVE

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.

Unless otherwise stated, all references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw #12800*, as amended.

Reasons for Decision

- [30] Under section 110.3(7), a Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [31] The Board finds there is no parking variance required, and in fact parking exceeds the minimum requirements, as there is adequate parking in the garage and driveway. The Board accepts the evidence of the Respondent that she will self-police the parking to ensure clients park on the driveway and do not use street parking. The Board imposed a condition that there shall be no more than 2 clients at one time and the site provides enough parking if that situation arises.
- [32] The Board finds a sign assists the community in identifying the business and will assist in preventing people attending the wrong property.
- [33] The Respondent is a mother of 2 small children and is aware of safety concerns.
- [34] The Respondent provided letters of support for the proposed development.

- [35] The Board does not have the authority to impose additional conditions on the Development Permit related to bylaw enforcement issues.
- [36] The Board finds the conditions imposed will minimize any potential effects the proposed development may have on the neighbours or neighbourhood.
- [37] The Board finds the proposed development is reasonable compatible with the neighbourhood and will not interfere with the amenities of the neighbourhood nor 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:

Mr. V. Laberge, Ms. C. Weremczuk, Mr. J. Kindrake, Ms. D. Kronewitt-Martin

Important Information for the Applicant/Appellant

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

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



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Date: October 7, 2016
Project Number: 226789998-001
File Number: SDAB-D-16-235

Notice of Decision

- [1] On September 22, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 30, 2016**. The appeal concerned the decision of the Development Authority, issued on August 19, 2016, to approve the following development:

To operate a Major Home Based Business. (Cleaning vehicles - OMAR'S AUTO)

- [2] The subject property is on Plan 9722455 Blk 70 Lot 85, located at 15919 - 86 Street NW, within the RF1 Single Detached Residential Zone. The Belle Rive Neighbourhood Structure Plan and Edmonton North 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 and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s supporting documentation; and
 - The Respondent’s supporting documentation.

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, Mr. P. Teterenko on behalf of Mr. G. Settingiano*

- [7] The Presiding Officer advised the Appellant that the Board cannot deal with tax matters or insurance matters.
- [8] Mr. Teterenko lives across the street from the proposed development and has lived there 15 years. This is a quiet residential street. There is an apartment next door. There are lots of children running around the neighbourhood. He has noticed an increase in the amount of traffic and vehicles. He has heard a lot of noise from polishing equipment going late into the evening. He has seen the use of chemical products. He noticed a vehicle leaking a substance so he called the fire department to clean it. This vehicle was eventually towed; he is not sure by whom.
- [9] Many neighbors share the Appellant's concerns. Mr. Teterenko submitted a petition of surrounding residents who are adjacent to or are across the street from the proposed development and are opposed to it.
- [10] He believes the Respondent is selling vehicles as well as cleaning them. Quite often, he sees people looking for the subject site, stopping, going for a test drive and then leaving in that vehicle. After once vehicle sells, another vehicle comes in. There seems to be 3-5 cars on site at 1 time. Some have dealer plates or no plates at all.
- [11] The Respondent has only been a tenant there for a few months. The property has a basement suite but he is not sure if it has a permit or not. The house has two separate entrances. The owner moved out 6-7 years ago. The daughter is managing the property now.
- [12] Upon questioning from the Board, Mr. Teterenko stated he has seen the Respondent working on the driveway or street. He has seen bottles of a chemical, but was not sure what kind. He has heard noise from something, maybe a polisher. He has heard vehicles starting up and running motors. He had seen gloves being used.
- [13] He assumes some repairs are happening on site because vehicles are leaving in a better condition than when they were brought in.
- [14] The Board asked Mr. Teterenko to expand on the noise he was hearing. He believed there is a commercial vacuum cleaner and polisher being used on the property. There are engine noises, revving for 20 minutes. He has seen the hoods of cars up and the Respondent working under it. He is not sure if the engines are being cleaned. He has witnessed liquids running down the driveway. These were not foamy. Mr. Settingiano, who lives next door, has smelled odors. The traffic and noise is constant, sometimes on a Saturday from noon until midnight. There is never a peaceful moment.

- [15] Mr. Teterenko has not seen signage on cars indicating they are for sale. Last week, there was less activity on the site. There are a few neighbors that work on their cars, but it is 1 vehicle, not a constant turnover of vehicles. He has witnessed other people on site but he is not sure if they are employees or friends.
- [16] Mr. Teterenko did not know the date of the Kijiji advertisement was submitted advertising the basement suite for rent. There have often been separate renters at the house.
- [17] He reiterated that the approximate number of vehicles is 4-6, always at least 3. He notices because they drive slowly, turn around at the end of the cul-de-sac, and the drivers knock on the Respondent's door. These people parked on the street.
- [18] He confirmed the Respondent works in the garage, on the driveway and street. The garage door is always open. He has not paid attention to whether the Respondent is washing every vehicle that arrives. All the houses have front driveways.
- [19] Mr. Teterenko concluded that this business affects the use and enjoyment of his property. There is more traffic, no peace and quiet, and he is always looking out for suspicious activities.

ii) Position of the Development Officer, Mr. B. Langille

- [20] The Development Officer stated that since the Appellant has raised the issue of a secondary suite, he has booked an inspection for the site. When he reviewed the history of the site, he did not see any active permits or permits applied for. If there is a secondary suite, it would invalidate this permit.
- [21] The property has 4 parking spaces. The Respondent indicated they have only 1 registered vehicle and he has only proposed 2 business visits per day.
- [22] A condition could be placed on the allowable hours of operation in order to limit the impact to neighbors.
- [23] If the Respondent chooses not to follow the conditions, bylaw enforcement will get involved and invalidate the permit.
- [24] He did not conduct a site visit.
- [25] There was a complaint regarding the property. A Compliance Officer visited the property twice and the issue was resolved. This led to the application for the Major Home Based Business Permit.

- [26] The Development Officer did not conduct a search to check the number of registered vehicles. There have been no inspections regarding the potential Secondary Suite.
- [27] There is nothing in the *Edmonton Zoning Bylaw* restricting the hours of operation of a business but a condition can be imposed.
- [28] The Board asked the Development Officer to comment on whether the proposed development would change the character of the neighborhood. The Development Officer believed the business did not involve much water based cleaning and only interior cleaning. There will only be 2 visits per day. This did not seem out of character for the neighbourhood. The Respondent did not provide any detail regarding machinery.
- [29] The Development Officer clarified that if there is in fact a Secondary Suite, the owner would need to choose one or the other. Decommissioning a suite involves removing any cooking facility and locks. If there is a Secondary Suite, that would cancel this Development Permit. The Development Officer would need to provide justification with proof that conditions were not being met and then the permit would be cancelled. This is essentially a stop order. The Respondent would need to reapply for another permit.
- [30] The Development Officer stated that there has been a separate home based permit applied for and approved for an auction to auction business. This involves no storage of vehicles and is only an administration office. If the Respondent had applied for the permits at the same time, the Development Officer would have asked some follow-up questions.
- [31] The Respondent explained to the Development Officer that he would pick up the vehicle, bring it back to the house for cleaning and polishing, and then drop it off when he was finished.
- [32] The Board asked if there are regulations for selling cars in the neighbourhood. As a condition on the Major Home Based Business, there can be no commodities sold on site. This limits drop-by visitors. If a business is growing, it should move to a commercial site. He would not grant vehicle sales. Auction to auction sales does not allow sales on site.
- [33] The Development Officer stated this is a Discretionary permit with no variances which was assessed based on the Respondent's information. The community consultation process is not mandated. He would need to gauge the impact on the neighbourhood through community consultation. There is a greater weight placed on adjacent property owners and those within 60 metres. The Board asked the Development Officer to comment on the petitions and whether it would have influenced his decision. He stated he would have asked more follow up questions. There is not enough detail on the petitions to determine exactly what the people signing them were agreeing to.

- [34] The *Edmonton Zoning Bylaw* does not limit the number of Minor Home Based Businesses a site can have. A person can have both Major and Minor Home Based Business on the same site.
- [35] The Board asked the Development Officer whether the proposed business would be better located in a commercial area. The Development Officer stated that if the Respondent was proposing more than 2 business visits per day, then maybe, but this development did not seem out of the ordinary.

iii) Position of the Respondent, Mr. A. Lwahid

- [36] The Respondent is withdrawing his submission regarding his taxes.
- [37] The Respondent asked his landlord to take the Kijiji advertisement off because he wanted to rent the whole house. But no one lives in the basement. He lives in the house with his wife, 3 children and brother. His brother does tile work from 8:00 a.m. to 8:00 p.m. and does not help with the Respondent's business.
- [38] He has never washed a car on the driveway since he moved there. He vacuums cars and uses environmentally friendly products inside the car because he has children himself.
- [39] He is a licensed dealer and has both a wholesale license and retail license, which he does not use. He does not sell cars out of his house.
- [40] He creates no noise, other than noise from a regular vacuum. He does not create high traffic as he is allowed 1 visit at a time. He has 1 vehicle registered to his wife. He has a personal vehicle with dealer plate. He cleans inside his garage.
- [41] He has one neighbour also causing noise. Between 8:00 a.m. to 5:00 p.m. noise is going on everywhere.
- [42] He has 8 signatures of support from his neighbours. His closest neighbour is in support. He showed her a copy of the Development Permit. Other neighbours are being told the wrong thing.
- [43] He has the right to do business. He is selling cars all over the province. He does paperwork for wholesale selling. He is not affecting his neighbours.
- [44] The street is tiny. He tries to keep all vehicles on the driveway.
- [45] The Respondent stated he can ask his landlord to sign his letter of permission if necessary.

- [46] In response to questions, the Respondent stated he only has 1 dealer plate. He never cleans engines because he would need a degreaser. He picks up the car at the dealer. On average he works on 3-4 vehicles per week, approximately 1 per day. He works on one vehicle at a time. No one comes to test drive any cars and he does not perform automotive repair. He only works Monday through Friday from about 9:00 a.m. – 6:00 p.m. Anything done after that is personal. He has 1 vehicle on the driveway and 1 vehicle in the garage. The streets are empty. His brother has no vehicle and he is picked up for work. He has no office outside his home. On certain days, he goes to dealers looking for cars. On other days he goes to the auction. Sometimes he will clean a car on auction days.
- [47] He does not clean muddy cars and the car mats are cleaned at the dealer. The Board questioned why the dealer would not clean and detail the car as well. The Respondent advised that the dealer does not have the time. He reiterated he uses a regular vacuum cleaner with all purpose cleaners. He just sprays and wipes and uses no water at all.
- [48] The Board advised the Respondent that the Appellant's petition referenced cleaning vehicles not a car wash. The Board asked what the Respondent advised his neighbors as nothing was written on top of the petition. He showed them the Development Permit. His auction to auction permit was issued 2 weeks after this permit was applied for. That permit is only for paperwork.
- [49] When he moved from Cold Lake, he used a truck that leaked oil. That truck has nothing to do with the business. After the police issued a notice, he had it towed.
- [50] When he cleans in his garage, his garage door is closed.
- [51] The Respondent would be open to a condition regarding the hours of operation.

iv) Rebuttal of the Appellant

- [52] Mr. Teterenko stated the Respondent works for many hours during the day and into the evening, although this has lessened in the last few weeks. It may not be every day and all the time, but it never ends. One vehicle is replaced by another. The garage door is opened when the car is being cleaned.
- [53] One time, he asked people who parked in front of his driveway what they were doing and they indicated they were buying a car. They come for a test drive and then leave with the car.
- [54] There are usually 3 vehicles on site. Prior to the Respondent applying, there were 5 or more vehicles on site. He is not paying that much attention to exactly which vehicle is being washed.

[55] He does not believe the Respondent will abide by any condition if he will not admit he is selling cars.

Decision

[56] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The Development Permit is REFUSED.

Reasons for Decision

[57] Under section 110.3(7), a Major Home Based Business is a Discretionary Use in the RFI Single Detached Residential Zone.

[58] This Major Home Based Business concerns a car cleaning business which is to take place in the garage at the home. The Board finds this will increase traffic in the area as cars are specifically brought to this site for interior and exterior cleaning. The Board finds there will be excessive noise from the business beyond regular business hours.

[59] The Board also notes that the Respondent has an approved Minor Home Based Business for this site authorizing him to operate as an administrative office for auction to auction sales and that vehicle sales are prohibited from this location. The Board notes the Development Officer indicated that, had these two permits been considered together, he would have further investigated the interaction between the two and potential for greater impact to the neighbours and neighbourhood.

[60] The Respondent has submitted that he leases the entire house. The Board accepts the evidence submitted that there potentially exists a Secondary Suite in the basement which would negate the opportunity of having this business located there.

[61] The Board accepts the more detailed petition from the Appellant regarding potential impacts over that submitted by the Respondent, which was silent as to what neighbours were signing.

[62] The Board finds the proposed development is neither appropriate nor reasonably compatible with the neighbourhood and will interfere with the amenities of the neighbourhood and affects the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance:

Mr. V. Laberge, Ms. C. Weremczuk, Mr. J. Kindrake, Ms. D. Kronewitt-Martin

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. 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.
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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Date: October 7, 2016
Project Number: 224518430-001
File Number: SDAB-D-16-236

Notice of Decision

- [1] On September 22, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 26, 2016**. The appeal concerned the decision of the Development Authority, issued on August 26, 2016 to refuse the following development:

To construct 3 Commercial Use buildings (Building A: General Retail Use, Building B: Rapid Drive-through Vehicle Service Use, Building C: General Retail Stores on main floor and Professional Financial and Office Support Use on 2nd floor)

- [2] The subject property is on Plan 0423131 Blk 1 Lot 1, located at 16720 - 76 Street NW, within the CNC Neighbourhood Convenience Commercial Zone. The Edmonton North Area Structure Plan and Schonsee Neighbourhood 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 refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions;

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

- Exhibit A – 2014 Traffic Count

Preliminary Matters

- [5] Mr. Kindrake advised that he was acquainted with one of the Appellants. 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 (the “*Municipal Government Act*”).

Summary of Hearing

i) *Position of the Appellant, M. Umarji and N. Umarji-Karbani for Zona Developments*

- [8] The Appellants submitted a 2014 traffic count of the area, marked Exhibit A.
- [9] The Appellants referred the Board to Tab 2 of their submission and extensively reviewed the area through a series of pictures. The proposed development consists of the construction of 3 buildings: Building A, Building B, and Building C.
- [10] The Appellants stated that they have designed the proposed development to minimize the impact to the neighbours that would be most directly affected by the carwash. The west side is screened by building A. The proposed carwash is also located 15 metres back from the residential area to the north and includes a 7.5 metres landscaped berm.
- [11] The Appellants submitted the Development Officer refused the proposed development because of a deficient loading space and because of an excess in the number of bays. However, the term “bay” has not been defined in the *Edmonton Zoning Bylaw*. Included in Tab 4 of the submission is a previous decision of a panel of this Board, where that Board found a similar proposal consisted of a bay with 1 entrance door and 1 exit door and separate stalls not several bays. The Appellants also includes several other car washes that have been approved in CNC Neighbourhood Convenience Commercial Zone.
- [12] The Appellants stated that the Development Officer seems to have an issue with the number of queuing spaces pursuant to Section 72.2(5) of the *Edmonton Zoning Bylaw*. However, those queuing sections were passed in 2008, and the previous Board decision was rendered in 2010. That Board found no issue with the number of queuing spaces. This proposed development has the required number of queuing spaces.
- [13] The Appellants submit that if this Board finds that this proposed development requires an 8 bay variance, it would still compliment the surrounding area because it is near a 24 hour 7-11 convenience store and gas station. It would not increase traffic and is consistent with the general purpose of the zone.
- [14] The Appellants submitted that the mechanical room, which could have the most noise impact, is encompassed inside the main building. They have used pre-cast concrete, which creates 10 inches of wall. They reiterated that the proposed development is set back 15 metres from the closest residential properties, and also includes a 7.5 metre

- landscaped berm. They have included a noise study and submit the proposed development creates less noise than an automatic car wash.
- [15] In terms of the one deficient loading space, the Appellants submitted any supplies for the car wash will be delivered inside the car wash bay.
- [16] The proposed development exceeds the required number of parking spaces. The Appellants have enclosed a memorandum from Transportation Services who supports the proposed development.
- [17] The Appellant submitted that the Development Officer believes there will be increased traffic with 8 stalls versus a 1 bay carwash. However, if 8 stalls are approved versus 1 bay, the queuing will be reduced. This carwash can service 8 vehicles at one time rather than 1 vehicle. Queuing mainly occurs 2 months a year.
- [18] The Board asked the Appellants to comment on the location of the proposed loading spaces and the distance users of buildings have to travel in order to utilize it. The Appellants stated loading for the car wash will be inside the building. Initially the spaces were in front of the garbage. For Building A, Transportation Services was concerned regarding the maneuverability of the garbage truck within that area, so they requested a study. The Appellants responded with the current plan placing the loading spaces beside Building C. The loading space and garbage space can be used interchangeably. The usage depends on the uses proposed for the Buildings A and C. The set up is similar to those of big box stores. They tried to connect the buildings with a sidewalk.
- [19] The Appellant submitted 1 entry and 1 exit is better than 8 entries and 8 exits as each of those would require their own queuing.
- [20] The Appellant stated the doors will be automatic. There will no blowers, so no additional sound. They referred the Board to their noise study, which indicates a rating of 60db whereas conversation is rated at 55db. The stalls in the carwash are not the closest thing to the residential properties. The closest thing is the office area and the mechanical room but the latter has been encompassed in another building. The mechanical room cannot be accessed from an outside entrance. All stalls will have individual vacuums.
- [21] Upon questioning from the Board, the Appellants stated there is a parking lot at the south end which currently exists and will remain part of the development. The required setback is landscaped. The further landscaped land is city land. To the south there are residential properties, but those properties are separated by 6 lanes of traffic.
- [22] In terms of community consultation, they spoke primarily to the neighbours to the north, who requested landscaping. However, the neighbours knew they purchased close to a CNC Neighbourhood Convenience Commercial zoned property. They Appellants stated that they could have built all of the buildings to 2 stories. They reiterated that the proposed development is set back 15 metres from the closest residential properties, and

also includes a 7.5 metres landscaped berm. In addition, these residents also have their own backyards for further separation.

- [23] The Appellants stated the whole proposal is designed to function as one property.
- [24] The Appellants confirmed they accept all the proposed conditions suggested by the Development Officer.

ii) *Position of the Development Officer, N. Shah and E. Peacock*

- [25] Section 72 of the *Edmonton Zoning Bylaw* clearly outlines the queuing requirements, with varying requirements for in-bound and out-bound spaces. Plus there are specific requirements for a complete service car wash or a multi-bay single entrance self-service car wash.
- [26] The purpose of the CNC Zone is to provide for convenience commercial and personal service uses, which are intended to serve the day-to-day needs of residents within residential neighbourhoods. The proposed use is Discretionary use. The number of bays is limited. There are no variance powers as per section 11 because there is no case of hardship. If the proposed development is approved, it may generate more traffic. This CNC Zone is surrounded by residential property. The loading space is located a distance of 287 feet from Building A. This is unsafe and unreasonable. Transportation Services did not allow a space by Building A because it may have created an unsafe situation.
- [27] This is a proposed multi-use building.
- [28] Section 310.4(9) states “where Use Classes, that may in the opinion of the Development Officer, create negative impacts such as noise, light or odours which may be noticeable on adjacent properties, and where the Site containing such Use Classes is directly adjacent to Sites used or zoned for residential activities, the Development Officer may, at the Development Officer's discretion, require that these potential impacts be minimized or negated. This may be achieved through a variety of measures including: Landscaping; berming or screening, which may exceed the requirements of Section 55 of this Bylaw; noise attenuation measures such as structural soundproofing; downward direction of all exterior lighting on to the proposed development; and any other measures as the Development Officer may deem appropriate.”
- [29] The queuing is directly adjacent to residents in the north. The trees are not sufficient to limit the impact. If a car enters access on the west into queuing, there could be a line up because more vehicles are going into the line than can be provided for and that might have an impact.
- [30] Amendments were made to Section 72 to clearly define that each stall is a bay. The CNC Zone specifically limits the number of bays to 1. This is to limit impacts. Other zones,

such as the CB1 Low Intensity Business Zone, allows up to 4 bays. Section 72 also allows the Development Officer to consider impacts based on the orientation and design.

- [31] No letters were sent to residential properties because this was a refusal.
- [32] The proposed design is too large for the site.
- [33] The extra parking space provided cannot be used as a loading space because it does not meet the proper dimensions.
- [34] The regulations were passed because large carwashes were being developed near residential sites and to specifically prevent the approvals of carwashes directly adjacent to residential properties such as this one.
- [35] The Development Officers acknowledged there are similar carwashes approved under this zoning. However, those are older cashes or a result of previous Board decisions. There are a number of zones that allow a number of bays. They believe the Blue Quill carwash is located near a school and Apartment Housing.

iii) Rebuttal of the Appellant

- [36] The Appellants asked the Board to disregard the Development Officer's arguments not listed on the Reasons for Refusal. They were never advised the queuing configuration was an issue or that there were safety concerns for the proposed loading spaces. They reminded the Board the original configuration was a safety concern for Transportation Services so that is why they proposed the current plan. The memorandum from Transportation Services sets out queuing next to 167 avenue. Their proposal will have much less of an impact which is complimentary to the existing convenience store and gas bar. This is a large piece of property.

Decision

- [37] 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, ADVISEMENTS, and NOTES**:

(1) DRAINAGE PLANNING CONDITIONS:

This advisement identifies the drainage assessments applicable to the property located at 16720-76 Street NW (Plan 0423131, Blk 1 Lot 1; Schonsee).

APPLICABLE ASSESSMENTS

1. Permanent Area Contribution (PAC)
 - Storm and sanitary PACs have been previously paid as a part of Schonsee Stage 1 project under Servicing Agreement No: DS-980

2. Expansion Assessment (EA)
 - Expansion Assessment has been previously paid as a part of Schonsee Stage 1 project under Servicing Agreement No: DS-980
3. Sanitary Sewer Trunk Charge (SSTC)
 - Based on our records, the entire property was previously assessed and paid for SSTC under DP#042516457-001.

Additional Notes

- The above assessment is made based on information currently available to our Department. Should such information change in the future, a new assessment will have to be made.
- In addition to the above items, if required, the applicant/owner shall pay for the installation cost of sewer services to property line. For detail, please contact Derek Kucy of Public Services Section, at 780-496-5450.

(2) FIRE RESCUE SERVICES CONDITIONS:

Upon review of the noted development (and Fire Access Plan), Edmonton Fire Rescue Services has no objections to this proposal however, has the following advisements for your implementation and information.

1. If the building(s) will be protected by a fire alarm system, ensure that the Fire Alarm Annunciator panel is located in close proximity to the building entrance that faces a street or emergency access route.

Reference: ABC 3.2.4.9 Annunciator and Zone Indication

2. Ensure that the hydrants identified on the site plan are fully functional prior to construction.

3. Ensure that emergency access route/fire lane signage is posted as per the 2006 AFC 2.5.1.53)

Reference: 2.5.1.5. Maintenance of Fire Department Access

Signs posted in conformance with above shall be permanently installed not more than 20 metres apart and not more than 2.3 metres above surrounding ground level to ensure that they are clearly visible to approaching vehicles.

4. Ensure that a Fire Safety Plan is prepared for this project, in accordance with the EFRS Construction Site Fire Safety Plan Template (attached). A formal submission of your Fire Safety Plan will be required for a Building Permit to be issued (please do not forward your Fire Safety Plan at this time). If you have any questions at this time, please contact Captain Bruce Taylor at cmsfpts@edmonton.ca.

Reference: 5.6.1.3. Fire Safety Plan

Except as required above, prior to the commencement of construction, alteration or demolition operations, a fire safety plan, accepted in writing by the fire department and the authority having jurisdiction, shall be prepared for the site. For additional information please contact Tiffany Edgecombe (tiffany.edgecombe@edmonton.ca) at our office.

(3) TRANSPORTATION SERVICES CONDITIONS:

1. Access from the site to 167 Avenue and 76 Street exists, as shown on the Enclosure. Any modification to the existing accesses requires the review and approval of Transportation Planning and Engineering.
2. The proposed connector sidewalk from the west property line of the subject site to tie into the City sidewalk on the north side 167 Avenue is acceptable to Transportation Planning and Engineering.
3. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
4. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required;
 - and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

http://vwww.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx

5. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

ADVISEMENTS:

1. Any advertising signs for the development must be located entirely within private property.
2. Pavement markings should be painted indicating the "No Stacking Zone" to ensure vehicles do not queue into the drive aisle to 167 Avenue as shown on the Enclosure.
3. Upon future subdivision of the subject property, Transportation Planning and Engineering would require a cross lot access agreement for the continued shared use of the accesses to 76 Street and 167 Avenue and the drive aisle through the site.
4. Any future development applications that will intensify the parking requirement may be required to do a parking justification including field observations. This would be submitted by the applicant to the satisfaction of Transportation Planning and Engineering.

Should you require any additional information please contact Pat Atkinson at 780-944-0256.

(4) DEVELOPMENT SERVICES CONDITIONS:

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, a detailed **LANDSCAPING PLAN** shall be submitted by the applicant in accordance to Section 15.4 and Section 55 of the *Edmonton Zoning Bylaw* 12800 and shall be to the satisfaction of the Development Officer.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

- a) cash to a value equal to 100 percent of the established landscaping costs; or
- b) an irrevocable letter of credit having a value equivalent to 100 percent of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6.

No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Reference Section 310.4(7)

Immediately upon demolition/ alterations of the building, the site shall be cleared of all debris.

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)

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)

Parking spaces for the disabled shall be (a minimum of 4 space) provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. Reference Section 54.1(3)

Bicycle parking shall be provided (a minimum of 5 space) in accordance to Section 54.3 and to the satisfaction of the Development Officer.

The off-street parking, loading and unloading (including aisles or driveways) shall be hard surfaced, curbed, drained and maintained in accordance to Section 54.6.

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

NOTES:

- 1) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence. You must require Development and Building permit approvals prior to issue a Business Licence.
- 2) Signs require separate Development Applications.
- 3) 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.
- 4) 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).
- 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) 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.
- 7) Applicant / Property Owner is to be advised that future sub-division of the site may require additional parking and loading spaces as per Section 54 of the Zoning Bylaws.

[38] In granting the development the following variance to the *Zoning Bylaw* is allowed:

- a) The minimum allowable number of Loading spaces of 3 per Section 54.4, Schedule 3 of the *Edmonton Zoning Bylaw* is varied to allow a deficiency of 1, thereby decreasing the minimum required to 2 Loading spaces.

Reasons for Decision

[39] Under section 310.2(4), Professional, Financial and Office Support Services are a Permitted Use in the CNC Neighbourhood Convenience Commercial Zone. Under section 310.3(8), General Retail Stores are a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone. Under section 310.3(17), Rapid Drive-through Vehicle Services are a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone.

[40] At the present time, on the east side of this lot, there exists a local convenience store and gas bar. The area to the west is vacant. The most recent traffic study for 167 avenue was submitted which identified there are approximately 14000 cars per day.

[41] In designing the building for this section of the lot, the Appellant designed a buffered zone between 7.5 metres-15 metres between buildings on the site and the residential area directly to the north. In addition, they talked to the residents to the north and found no opposition to their design. These buildings are consistent with construction within the CNC Neighbourhood Convenience Commercial Zone. The designers considered the noise problems from a carwash to be primarily from the mechanical room. They designed the carwash so that the mechanical room would be at the northeast corner of the facilities and enclosed within the building labeled C. This mechanical room has 10 inch thick walls to insulate the noise and there is no exterior entrance or exits from this room. This design meets all requirements of the CNC Zone except 1 variance. The Appellants have agreed to all the conditions proposed from Transportation, Drainage, and Fire and Rescue.

[42] The proposed development is not an overdevelopment and only requires 1 variance for a single Loading space.

- [43] They have met all parking requirement for 59 cars and provided parking for 60 vehicles.
- [44] Two loading zones have been provided for at the side of Building C and the convenience store. These two stalls are for all the buildings on the site except for the carwash. Loading for the carwash building will be done inside that facility.
- [45] There is a difference in interpretation of the term “bay”. The CNC Zone provides a limitation of one bay per site. The Development Officers have interpreted the term bay as being the total space that encloses each carwash with 1 entrance and 1 exit. The Appellants’ definition of bay is the facility housing the carwash with each space within it called a “stall”. A previous panel of this Board determined that any facility with 1 entrance door and exit door by definition is a 1 bay facility regardless whether there were 1 or more “stalls” located within that bay. That Board accepted the definition that a “bay” is an enclosed area with 1 entrance and 1 exit. They went on to say the subdivision of the space within that bay does not create additional “bays” but more correctly interpreted as “stalls”. Under the terms of existing CNC Zone, numerous Rapid Drive-through Vehicles Services uses have been approved within the CNC Zone with two or more stalls within a single bay, some of which were identified within the Appellants’ submission.
- [46] The Board considered the impact of having a single mechanical carwash rather than then proposed facility and finds there would be additional noise as it has mechanical arms and the proposed one is hand wand car wash. The Board also finds moving cars through a queuing line in and out of an 8 stall carwash would have less impact on the surrounding community then a single lane car wash with a queuing lane.
- [47] In determining that the area inside the facility will be divided into stalls, this building will comply with CNC regulation of having 1 bay on the site. Thus no variance is required to this section.
- [48] The Board finds granting the one variance will not unduly interfere with the amenities of the neighbourhood nor materially 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:

Mr. V. Laberge, Ms. C. Weremczuk, Mr. J. Kindrake, Ms. D. Kronewitt-Martin

Important Information for the Applicant/Appellant

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

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