



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 12, 2016
Project Number: 169544513-002
File Number: SDAB-D-16-241

Notice of Decision

- [1] On September 29, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on July 28, 2016. The appeal concerned the decision of the Development Authority, issued on July 15, 2016, to refuse the following development:

Construct an Accessory Building (Shed, 1.98m x 4.57m)

- [2] The subject property is on Plan 1763HW Blk 12 Lot 30, located at 9346 - 73 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Ritchie Neighbourhood Improvement Plan/Area Redevelopment Plan apply to the subject property.

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

- Copies of the Development Permit application with attachments and the refused Development Permit;
- Registered Mail receipt confirming delivery of the Development Officer's decision on July 19, 2016;
- Development Officer's Written Submissions dated September 14, 2016; and
- One online response in opposition to the development.

Preliminary Matter

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. M. Skare

- [7] Mr. Skare submitted Exhibit “A”, which consisted of various documents including written submissions, photographs of the subject Accessory building, and character reference letters.
- [8] Mr. Skare identified the two main reasons for the Development Officer’s refusal: the lack of space between the principal Dwelling and the shed, and the lack of space between the shed and the property line shared with 9350 – 73 Avenue.
- [9] Referring to the photographs contained in Exhibit “A”, Mr. Skare submitted that there are other properties within the neighbourhood with Accessory buildings located near or on property lines. In his view, there is flexibility with respect to developments located in the RF3 Zone. In one photograph, he noted that a massage parlour is located adjacent to an infant clothing store.
- [10] With respect to the neighbouring property, Mr. Skare clarified that he did not lodge the complaint that resulted in his neighbour, Ms. Sorenson, having to move her shed further away from the shared property line. He explained that his own shed was constructed in October 2014. Approximately one year afterward, a Stop Order was issued, and both his shed and his neighbour’s shed were to be moved away from the shared property line.
- [11] He stated that he had obtained verbal agreement from his neighbour prior to constructing the shed, but had not obtained a written letter of support. He would not have started construction on the shed without an agreement, particularly due to his physical health complications.
- [12] Upon questioning by the Board, Mr. Skare stated that due to financial reasons, he did not survey his lot to determine whether the existing shed is encroaching upon the neighbouring property. However, he did cross reference the real property report and it was his belief that the shed was located within the property line.
- [13] Referring to the plot plan that was submitted with the development application, Mr. Skare pointed out that the Amenity Area in the Rear Yard is occupied by a child’s play space, a garden, and a garage. As such, it was his view that the shed can only be located at its current location next to the shared property line.

ii) Position of the Development Authority, Ms. F. Hamilton

- [14] Ms. Hamilton submitted Exhibit “B”, a series of photographs obtained from various compliance inspections of the subject Site and the neighbouring property at 9350 – 73 Avenue. She explained that both the subject property and the neighbouring property have existing compliance files on other matters, but the current appeal arises from a compliance inspection conducted in July 2015. As a result of that inspection, a Violation Notice was issued on August 12, 2015.
- [15] Referring to the compliance photographs in Exhibit “B”, she noted that in July 2015, both sheds existed side by side and were non-compliant with the development regulations. Subsequently, the smaller shed located on the neighbouring property was moved further into the Rear Yard to comply with the regulations, but the subject shed remained at its current location, as shown in the photographs dated September 22, 2016.
- [16] In her view, it would not have been appropriate to grant the required variance for the subject shed as the Site presented no hardship, particularly as the neighbouring property owner had moved her shed to comply with the regulations. Furthermore, without a letter of support from the neighbouring property owner, she could not conclude that the development would not have a negative impact upon the neighbouring property owner.
- [17] Upon questioning by the Board, Ms. Hamilton explained that once a development permit has been granted, the application is typically forwarded to Building Codes for further review. Stop Orders, if applicable, would usually be issued at this stage by a Building Safety Codes Officer. However, not all Accessory structures require a Building Codes permit. As such, should the Board decide to grant the development permit, and given that questions have been raised about the subject Accessory building’s location relative to the shared property line, she would advise that the Applicant contact a Building Safety Codes Officer to ensure that there are no concerns about fire hazards or other compliance issues.
- [18] Ms. Hamilton also clarified that the Development Authority typically does not set conditions to control water flow from eavestroughs. If there is concern over eaves projection, the concern would typically be restricted to its projection over a required Setback and not the property line.

iii) Position of Affected Property Owner in Opposition to the Development, Ms. B. Sorenson

- [19] Ms. Sorenson is one of the owners on title for the immediately adjacent property located at 9350 – 73 Avenue. She disagreed with the Appellant’s statement that he had consulted with her prior to constructing the subject shed. She explained that Mr. Skare had spoken to her common law husband, who is not the property owner as his name is not on title.

- [20] Ms. Sorenson stated that both she and her neighbour had received notices from the City of Edmonton to move their respective sheds away from the shared property line. While she has complied with the notice, her neighbour has not. In addition, it would appear that Mr. Skare has violated the subsequent Stop Order issued against his shed, as he has put up shingles and a door for his shed over the last six weeks.
- [21] She submitted that Mr. Skare's shed encroaches onto her property, and has prevented her from constructing a six foot high fence for the safety of her 13 grandchildren and various pets. In addition, she raised concerns about the sloped roof of Mr. Skare's shed, which results in water flowing toward her property and increases the possibility of flooding.

iv) Rebuttal of the Appellant

- [22] Mr. Skare stated that he has not put up any shingles, and that the shed door was installed only out of necessity, as there was a theft of approximately \$5,000.00 worth of materials and equipment from the shed in July.
- [23] With respect to Ms. Sorenson's desire to construct a fence, he agrees that a new fence is needed, as the existing wire fence is falling over. He has engaged in discussions with Ms. Sorenson's father, the other property owner on title, but Mr. Skare is not prepared to share the costs for a six foot high fence. For financial reasons, he is prepared to share the costs for a standard five foot fence, and the Sorensens may choose to pay extra for the additional footage.

Decision

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

Reasons for Decision

- [25] The subject development, existing without permits, is for an Accessory building to a Single Detached House, which is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [26] Section 50.1(2) states that "Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued." As such, the subject development would typically be allowed as a Class A Permitted Development with no notices required.

[27] However, Section 12.4 states that a Class B Discretionary Development “includes all developments for which applications are required and are for a Discretionary Use or require a variance to any of the regulations of this Bylaw.” As the subject Accessory building requires variances to Sections 50.3(4)(b) and 50.3(4)(c) of the *Edmonton Zoning Bylaw*, it is considered a Class B Discretionary Development. The Board must therefore determine whether it would be appropriate to grant the required variances according to the test set out under Section 687(3)(d) of the *Municipal Government Act*.

[28] Section 687(3)(d) of the *Municipal Government Act* provides as follows:

687(3) In determining an appeal, the subdivision and development appeal board

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

[29] Throughout the hearing, the Board heard from the Appellant that the subject shed is located within his property, while the neighbouring property owner indicated that the shed encroaches upon her property. However, no land survey was conducted to determine the exact location of the shed and the property line. The Board therefore accepts the Development Officer’s submissions that the proposed shed is located on the property line shared with 9350 – 73 Avenue.

[30] Upon reviewing photographs of the subject development, the Board finds the slope of the shed roof contributes to water shedding upon the adjacent property, which could result in drainage issues and property damage to the neighbouring property. Furthermore, the photographic evidence indicate that the location of the shed along the property line impacts the neighbouring property owner’s ability to build a fence. As such, the Board finds that the proposed development, currently existing without a permit, does materially interfere with the use and enjoyment of the neighbouring property.

[31] In addition, the Board notes that both the subject property’s owner and the neighbouring owner were issued Violation Notices to move their sheds away from the shared property line. The neighbouring owner complied, while the owner of the subject property did not. Upon review of both the photographic evidence and the real property report, the Board is of the view that the subject Site presents no particular hardship that would prevent the

Appellant from following his neighbour's example by relocating his shed to an alternative location that would meet the Setback requirements.

- [32] For the above reasons, the Board finds that the proposed development does interfere with or affect the use and enjoyment of neighbouring parcels of land, and does not meet the test set out under Section 687(3)(d) of the *Municipal Government Act*. The Board therefore declines to grant the required variances and the appeal is denied.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

M. Young; D. Kronewitt Martin; A. Nagy, E. Solez

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.



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SDAB-D-16-242

An appeal to Change the Use from a General Retail Store to a Minor Alcohol Sales Use, located at 3881 – Allan Drive SW was TABLED to October 20, 2016.



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Date: October 12, 2016
Project Number: 225878666-001
File Number: SDAB-D-16-243

Notice of Decision

- [1] On September 29, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on September 6, 2016. The appeal concerned the decision of the Development Authority, issued on August 18, 2016, to approve the following development:

Operate a Major Home Based Business (Bed and Breakfast Operation -
HAPI'S PLACE)

- [2] The subject property is on Plan 0322852 Blk 4 Lot 26, located at 1899 - Robertson Crescent SW, within the RSL Residential Small Lot Zone. The Rutherford Neighbourhood Area Structure Plan applies to the subject property.
- [3] 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 attachments, and the approved Development Permit;
 - Development Officer's Written Submissions, dated September 21, 2016, with attachments;
 - Correspondence between the Appellant and Sustainable Development;
 - Pictometry images of the subject property; and
 - One online response and one email in opposition to the development.

Preliminary Matter

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. H. Jiang

[7] Mr. Jiang stated that he represents other neighbouring property owners who opposed the development. He and his neighbours purchased their homes due to the quiet location, isolated away from the main road.

[8] He submitted that the proposed development raises safety concerns for the young children living in the neighbourhood, as well as those who attend the nearby K-9 school. It was his view that the development will introduce unnecessary traffic and safety risk for the children who walk to school.

[9] Parking is also a concern, as the neighbourhood already experiences on-street parking stresses. The development will introduce parking stresses from people outside the community.

[10] He also expressed the view that the development will have a negative impact upon property values, though he did not have concrete empirical evidence to support this submission. Notwithstanding, the potential depreciation of property values is a concern shared by himself and many other neighbours.

[11] He concluded that there are more suitable alternatives for out-of-town visitors seeking accommodation within the city. A Bed and Breakfast operation located in a residential area, away from major attractions, is not appropriate.

ii) Position of Affected Property Owners in Support of the Appellant, Mr. E. Steiner and Ms. T. Steiner

[12] Mr. Steiner and Ms. Steiner submitted Exhibit "A", which spoke to their views on how the development will impact property values, traffic safety and stranger danger. Many of Mr. Jiang's concerns were echoed by Mr. Steiner and Ms. Steiner.

[13] Upon questioning by the Board, they confirmed that although the area is served by sidewalks, traffic safety remains a concern for pedestrians, as the stop sign at the T-intersection located near their home is often ignored, with drivers often speeding down the street. The proposed development will exacerbate the problem.

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

- [14] Mr. Robinson explained that his review of the proposed development included additional requests for basement plans and for expressions of support from neighbouring property owners. He obtained the basement plans, which met his approval. The Applicant also obtained support from the immediately adjacent neighbours to the east and west of the subject Site, as well as the neighbour directly across the street.
- [15] He took other factors into consideration, such as the development's compliance with the regulations governing Major Home Based Businesses under Section 75. In particular, he noted the corner lot location with available on-street parking, as well as the four off-street parking spaces (two in the garage, and two on the Driveway).
- [16] Upon questioning by the Board, he confirmed that the conditions of the development permit, such as limitations upon Signage and employee visits, are standard for Major Home Based Businesses. He noted that under the RSL Zone, the proposed development actually meets the requirements for a Class A Permitted Development Permit for a Secondary Suite, with no variances needed (though separate external access would be required).
- [17] With respect to concerns about pedestrian safety, he explained that most of the neighbourhoods in the Heritage Valley area are designed with pedestrian-friendly walkways. To demonstrate how traffic and pedestrian safety has been built into the neighbourhood, he accessed Google Maps and provided an overview of the various local arterial and collector roads in the surrounding area.
- [18] Upon questioning by the Board, he clarified that although Bed and Breakfast is a defined term under the *Edmonton Zoning Bylaw*, the definition does not restrict the duration of stay, nor do the regulations under Section 75 which govern Major Home Based Businesses.
- [19] Mr. Robinson also confirmed that the approved permit is for a five-year period, but the Board may vary the duration at its own discretion.

iv) Position of the Respondent, Mr. and Ms. Husmillo

- [20] Ms. Husmillo explained that she and her husband do not intend to run a typical Bed and Breakfast, but to host the occasional out-of-town visitor using the AirbnbTM online reservation platform. When she initially started researching the process of listing her home on AirbnbTM, she learnt that all listings must comply with local laws. As a result, she contacted the City, and was informed that she would need to apply for a Major Home Based Business Development Permit.

- [21] She and her husband intend to rent out a maximum of two rooms, and do not expect more than one person or one couple renting each room at any given time. She acknowledged that there are other properties in the neighbourhood who park numerous cars on the street, but they intend to only allow users to park either off-street or directly in front of their house.
- [22] She clarified that both she and her husband will remain residing in the property, and will not host any visitors without being present. As such, they remain invested in preserving the family-oriented character of the neighbourhood, and to this end, they have no intention of changing the façade of the building, installing signage, or hiring non-resident employees.
- [23] Upon questioning by the Board, they confirmed that they maintain the upkeep of the sidewalks bordering the corner lot.

v) *Rebuttal of the Appellant*

- [24] The Appellant reiterated that it is both his view and that of various neighbours that the proposed development is not in the best interests of the neighbourhood.

Decision

- [25] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in the approved permit issued on August 18, 2016, for Project Number: 225878666-001.

Reasons for Decision

- [26] The proposed development is for a Major Home Based Business, which is a Discretionary Use in the RSL Residential Small Lot Zone. The proposed Bed and Breakfast meets all required development regulations under the *Edmonton Zoning Bylaw*, and no variances are required.
- [27] During the course of the hearing, the Board heard concerns from various individuals that the proposed development poses traffic and safety concerns. However, upon review of the development application package, and following the oral submissions of the Development Officer and the Respondent Applicants, the Board finds that the subject Bed and Breakfast proposes only two sleeping facilities, which will contribute a maximum of two additional vehicles to this district.
- [28] This community houses approximately 68 to 72 residential properties, with a pedestrian-friendly walkway system, and a well laid-out system of arterial and collector roads to streamline traffic. It is the Board's view that an additional two sleeping facilities, or an

additional two vehicles on the streets, will not be of significant impact upon traffic or safety concerns.

- [29] The Board also heard that on-street parking stresses are an ongoing concern. However, the proposed development meets all off-street parking requirements for a two-unit Bed and Breakfast, and is therefore unlikely to rely upon on-street parking.
- [30] The Board is not unsympathetic to the traffic safety and on-street parking concerns raised by the Appellant and the neighbouring property owners who appeared in support of the appeal, particularly the recurring issues with drivers speeding through residential streets and intersections, as well as home owners who abuse on-street parking usage. However, these concerns are enforcement matters which fall outside the purview of this Board.
- [31] Finally, the Board notes that although there were neighbours in the notification area who opposed the development, there were also those who supported the proposed Bed and Breakfast, including the immediately adjacent neighbours who would be most affected by the development.
- [32] For the above reasons, the Board can find no valid planning reasons for why this development should be refused. As such, the appeal is denied and the development is granted.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

M. Young; D. Kronewitt Martin; A. Nagy, E. Solez

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.