

Edmonton Subdivision and Development Appeal Board

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Date: February 16, 2016
Project Number: 181499006-001
File Number: SDAB-D-16-046

Notice of Decision

[1] On February 10, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 12, 2016**. The appeal concerned the decision of the Development Authority, issued on January 12, 2016, to refuse the following development:

To convert an existing Duplex to 3 Dwellings of Apartment Housing and to construct interior alterations.

[2] The subject property is on Plan RN43B Blk 60 Lot 13, located at 11541 - 91 Street NW, within the RF3 Small Scale Infill Development Zone.

[3] The following documents are on file and were referenced during the hearing:

- A written submission from the Development Officer;
- A letter from the Alberta Avenue Community League expressing opposition to the proposed development;
- An email from a neighbour living within the 60-metre notification zone expressing opposition to the proposed development;
- Two responses submitted online from neighbours living within the 60-metre notification zone expressing opposition to the proposed development; and
- A presentation submitted by affected neighbor, Mr. Colton Kirsop.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

i) Position of the Appellant, Amelia Leung

- [6] The Appellant, Amelia Leung, appeared at the hearing to argue in favour of allowing the conversion of the subject property from its currently permitted Use as a duplex into three units of apartment housing (the “Proposed Development”).
- [7] Ms. Leung’s family acquired the subject property in 1983. At that time it had a total of four dwelling units: two in the basement, one on the main floor and one on the upper floor. She understands that it was originally approved as a duplex but has been functioning with three or more units for many years. In 2000 the building was condemned. Nobody has lived there since 2000 and it currently remains unoccupied.
- [8] Ms. Leung’s intention is to restore the building to a habitable condition. She acknowledges that this property has been a problem for the neighbourhood, but her efforts are directed toward remedying that problem. The exterior appearance of the building has been improved by the recent installation of stucco. This improved the appearance of the building to such a degree that a City Assessor assumed that the building was fully renovated and therefore increased its assessed value by \$100,000.
- [9] Because the building has existed with three dwelling units for many years, Ms. Leung sought guidance from the City’s Sustainable Development department as to the steps she should take to fully legalize the building. One development officer told her to get rid of the upper unit and apply for a secondary suite in the basement. Another development officer told her to apply for a three-unit apartment house. She was also told that her application would certainly be denied and that ultimately it would have to be decided by the Subdivision and Development Appeal Board.
- [10] With respect to the email from a neighbour expressing opposition, Ms. Leung suggested that there may be confusion about which building this appeal concerns. The email references a house with asbestos siding. The subject building had its stucco removed a decade ago and was clad in only housewrap and wire until very recently. Further, it never had asbestos siding.
- [11] With respect to the letter from the Community League, Ms. Leung said that she understands the concerns about the appearance of the property. However, any untidiness is a byproduct of ongoing renovation. The construction clutter is contained and will eventually be removed.
- [12] In reference to the fact that the site does not meet the minimum dimensions for Apartment Housing, Ms. Leung noted that densification is a stated objective of City Council. Furthermore, smaller dwelling units are desirable given the trend towards smaller families. Smaller and more affordable living space close to downtown is what many people are looking for.
- [13] Ms. Leung noted the addition of the third dwelling unit results in a doubling of the required site size. In other words, according to the regulations, two extra people living on the site

means the site must be twice as big. Ms. Leung suggested that this might make sense for typical larger apartment housing but does not make sense for her proposed development.

- [14] With respect to parking, Ms. Leung said that there is room in front of the garage. Although it will not accommodate a large pick-up truck, an average sedan can fit there. She further noted that the people who would choose to live here would likely choose to have small cars or use public transit.

ii) Position of the Development Authority

- [15] Mr. Benny Liang of the City's Sustainable Development department appeared at the hearing to provide the Board with an overview of the reasons why the proposed development was refused. These were: (1) a deficiency in the required number of parking spaces, (2) a deficiency in private outdoor amenity space, (3) a deficiency in the minimum site area and width, and (4) a failure to meet any of the location criteria for apartment housing.

- [16] With respect to parking, Mr. Liang noted that the proposed parking spaces will not accommodate anything but very small cars. It is likely that vehicles parked in the proposed spaces will obstruct the lane. Also, because of the deficiency in parking, there may be more usage of on-street parking.

- [17] In response to a question from the Board, Mr. Liang said that the subject site is too far from a transit centre to qualify as a Transit Oriented Development requiring less parking.

- [18] In response to a question from the Board about the proximity of neighbourhood parks, Mr. Liang asked the Board to refer to Google Maps. He noted that the nearest park was several blocks away.

v) Position of an Affected Property Owner

- [19] Mr. Colton Kirsop, a neighbour living within the 60-metre notification radius, appeared at the hearing to express his opposition to the proposed development.

- [20] With respect to parking, Mr. Kirsop noted that 91 Street is heavily used for parking. The nearby stadium causes a strain on parking during events. He showed photos taken on a Friday evening and a Sunday morning showing that the street is fully occupied with parked cars.

- [21] Mr. Kirsop showed a recent photo of the garage on the subject site. It appears to be boarded up and not serviceable. Further, there is a wheel-less camper trailer parked in front of one of the garage doors.

- [22] Mr. Kirsop described parking difficulties in this alley. Often there are vehicles parked improperly or illegally. The small parking spaces at the rear of both his house and the subject house result in parked vehicles extending into the lane and causing a hazard for navigating through the lane.
- [23] Mr. Kirsop expressed concerns about the overall livability of the proposed development. There is no outdoor area suitable for relaxation, gardening, playing, etc. The three proposed dwelling units would result in eight bedrooms which would mean too many people living on too small a site. In answer to a question from the Board, Mr. Kirsop admitted that whether or not there are two or three dwelling units, the overall number of bedrooms will not be changed.
- [24] In summary, Mr. Kirsop suggested that the proposed development is not in line with the revitalization of the neighbourhood.

vi) Rebuttal

- [25] In rebuttal, Ms. Leung stressed that the number of bedrooms will not be affected by whether the subject building is deemed apartment housing or a duplex.
- [26] She also said that just because the garage is not currently functional, it cannot be assumed that it will remain so. Renovations are ongoing.

Decision

- [27] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**.

Reasons for Decision

- [28] While Apartment Housing is a Permitted Use in the RF-3 Small Scale Infill Development Zone, the subject site is markedly deficient in size for apartment housing when locational criteria are applied to the Proposed Development at the Subject Site. For instance, at less than half the size required by the Zoning Bylaw regulations, the site falls far short of the minimum required area of 750m² by 382 m² or 51%.
- [29] The Subject Site is neither on a Corner Lot, nor a service road or arterial road, both of which are location requirements for Apartment Housing. The foregoing deficiencies go hand in hand with the lack of private outdoor amenity space available to potential users of the Proposed Development. Indeed, the Appellant has provided no locations for Private Outdoor Amenity Areas for the Proposed Development and there is no suitable location for same on the Property. This adds to the Board's determination that this site does not meet the intent of the Zoning Bylaw with respect to Apartment Housing.

- [30] The Proposed Development is also deficient in Site Width by 6.9m (17m required, site is 10.1m). The Board finds that these deficiencies taken together result in an untenable negative impact on livability at the Proposed Development.
- [31] Based on the evidence presented, the Board accepts that there are difficulties associated with both on-street and rear-lane parking in this neighbourhood. The deficiency in proposed parking will only exacerbate an already difficult parking situation.
- [32] The Board notes the opposition of the Community League and several individual neighbours. The Board also notes the absence of any evidence of support for this development, aside from the advocacy of the Appellant.
- [33] Based on the foregoing, the Board finds that, pursuant to Section 687(3)(d) of the Municipal Government Act, the proposed development would unduly and negatively impact the use, value and enjoyment of neighbouring parcels of land.



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

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.

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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12124 - 141 Street
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Date: February 16, 2016
Project Number: 182970067-001
File Number: SDAB-D-16-047

Notice of Decision

[1] On February 10, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 13, 2016**. The appeal concerned the decision of the Development Authority, issued on January 4, 2016, to refuse the following development:

Operate a Major Home Based Business (administrative office for a paving business).

[2] The subject property is on Plan 5844HW Blk 18 Lot 30, located at 12124 - 141 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents are on file and were referenced during the hearing:

- A written submission and photographs of the subject site submitted by the Development Officer;
- A series of photographs, submitted by the Appellant, which show the subject commercial vehicle and other commercial vehicles on nearby sites;
- A decision of the SDAB from 2013 involving similar facts, submitted by the Appellant;
- A petition of support for the proposed development signed by 15 affected neighbours, submitted by the Appellant;
- Two emails from neighbours in support of the proposed development; and
- Two online submissions from neighbours in support of the proposed development.

Summary of Hearing

[4] At the outset of the appeal hearing, the Presiding Officer disclosed that last year he had sat on a panel that heard a related appeal from Mr. Marcinew. Based on this disclosure, the Presiding officer asked Mr. Marcinew if he had any reason to believe that the impartiality of the panel for this hearing was compromised. Mr. Marcinew stated that he had no objection to the composition of this panel. There were no other objections from anyone in attendance to the composition of the panel.

[5] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

i) Position of the Appellant

[6] The Board heard from Terry Marcinew who appeared at the hearing to argue in support of permission to keep his oversized commercial truck at his home for the purpose of his home based business.

[7] Mr. Marcinew showed pictures of other properties in close proximity to him that have large commercial vehicles stored on site. He said that that these vehicles have the required permits to park in residential zones.

[8] Mr. Marcinew recounted a 63 year history of operating a single truck business from the subject site. His father began a small trucking business in the 1950s. He began driving a truck for a living in 1971 and took over his father's business in 1978. Throughout this entire history, a large commercial truck has been parked on the residential site.

[9] Mr. Marcinew indicated that he has support from the vast majority, if not all, of his neighbours. He provided a petition signed by 15 neighbours as evidence of this fact.

[10] The home based business applied for involves only the parking of an unloaded commercial truck and paperwork in a home office. There are no employees other than Mr. Marcinew. There are no business visits to the home. There is no storage of any business related equipment other than the truck.

[11] Currently the business operates approximately six months every year, from May to November. During the winter months, the truck is parked and not moved. During the operational season, the truck leaves the residential site unloaded at approximately 7:00 a.m. The route used to exit the residential area is very short and direct. It does not pass through any school zones. The truck returns home empty at approximately 7:00 p.m. The truck is serviced and cleaned off-site.

[12] There are other commercial vehicles that operate in the area. For example, there are snow plows and garbage trucks. The difference between his truck and these trucks is that his truck is lighter.

[13] Mr. Marcinew's truck is new and quiet. He does not idle it for long periods of time. He leaves quickly and quietly in the morning and neighbours are not disturbed. There is little exhaust from the truck as it is new and meets modern emission standards.

[14] The truck is not visible to most neighbours. It is parked behind his house. To the immediate west is an industrial site.

iv) Position of the Development Authority

[15] George Robinson of the City's Sustainable Development department appeared at the hearing to review the reasons for the refusal of the permit. The permit was refused for the following reasons:

1. The proposed development does not qualify as a Major Home Based Business. The proposed development would more appropriately be located in an Industrial Zone having regard for the overall compatibility of the use with the residential character of the area. (Reference Sections 75.9, 110.2 and 110.3)
2. The applicant proposes to park a commercial vehicle (large truck) on site which exceeds the maximum gross vehicle weight (G.V.W.) of 4,600 kg. allowance in a Residential District. (Reference Section 45.1 (a) and 45.1 (b))
3. The applicant proposes outdoor storage of equipment associated with the business (large truck). (Reference Section 75.5)

[16] When asked by the Board how the apparent support from the community would affect the position of the Development Authority, Mr. Robinson said that it is the policy of his department to enforce the regulations related to overweight commercial vehicles (section 45) and outdoor storage of equipment (section 75).

Decision

[17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is allowed 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.
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling.
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.
4. The site shall not be used as a daily rendezvous for employees or business partners.
5. The site shall not be used by employees or business partners as a parking or storage location.
6. With the exception of a single commercial truck, there shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business.
7. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
8. Fabrications of business related materials are prohibited.

9. All commercial and industrial equipment, including but not limited to Bobcats, are not permitted at the site. The equipment shall be stored at an approved storage facility.
10. One unloaded commercial vehicle in excess of 4600kg gross vehicle weight may be parked at this address. All other commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any additional commercial, industrial and overweight vehicles are parked or stored at the residential site.
11. One or more enclosed or empty non-enclosed trailer with less than 4600kg gross vehicle weight shall be parked at an approved storage facility, unless a variance has been granted for an enclosed or empty non-enclosed trailer for this Major Home Based Business. 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. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes.
12. **This Development Permit expires on December 31, 2022.** A new Development Permit must be obtained to continue to operate the business from this location.

Reasons for Decision

- [18] A Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [19] The Appellant has been operating his home based business for many years and the evidence suggests that it has had little or no impact on the use, value and enjoyment of neighbouring parcels of land.
- [20] There is no business activity taking place on site other than the parking of an unloaded commercial truck. The truck is not serviced on site. It leaves and enters the community through a safe and efficient route and likely goes unnoticed by most neighbours most of the time.
- [21] The commercial truck cannot be seen from properties on 141 Street. There are no residential properties across the lane to the west of the subject property. In fact, to the immediate west of the subject property is an industrial zone and 142 Street is a major truck and transit route.
- [22] The same or similar activity has taken place on this site for more than 60 years. The Board was presented with no evidence that there has been a problem in the past. To the contrary, the Board was presented with evidence of strong community support in the form of written submissions from neighbours and a petition signed by 15 neighbours.
- [23] The Appellant is asking permission to continue doing for six more years what has been done for 60 plus years without issue. This approval is subject to conditions that will ensure that the business operates no more intensively than it has in the past.

[24] Based on the foregoing, the Board is of the opinion that allowing the Appellant to operate his home based business and store his commercial vehicle on site will not have an undue and negative impact on the use, value and enjoyment of neighbouring parcels of land.



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

Important Information for the Applicant/Appellant

1. 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.
2. 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.
3. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
4. 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.
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SDAB-D-16-048

Application No. 183991922-001

An appeal to construct a Freestanding Off-premises Sign, located at 7026 – 109 Street NW was **TABLED** to March 9 or 10, 2016.