

Date: July 24, 2015  
Project Number: 161225631-003  
File Number: SDAB-D-15-142

### **Notice of Decision**

This appeal dated June 11, 2015, from the decision of the Development Authority for permission to:

Convert the second floor of the existing mixed Use building to a Lodging House (existing without permits),

On Plan 9825188 Blk 12 Lot 3A, located at 10608 - 97 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 9, 2015.

The decision of the Board was as follows:

#### **Summary of Hearing:**

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to convert the second floor of the existing mixed Use building to a Lodging House (existing without permits), located at 10608 – 97 Street NW. The subject Site is zoned CB2 General Business Zone. The development permit application was refused because a Lodging House is neither a Permitted nor Discretionary Use in the CB2 General Business Zone.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Development Authority on June 16, 2015
- A copy of the Boyle Street / McCauley Area Redevelopment Plan

The Board heard from the Appellant, Ms. J. Skeffington, who provided the following information:

1. She provided a general history of the building that was originally constructed in 1943.
2. Since 1943, the building had been continuously used as a Lodging House, with various ownership changes over the years.
3. In 1999, one of the owners converted the building back to a Single Dwelling.

4. Five or six years later, the building reverted back to a Lodging House without permits.
5. The Fire Department recently inspected the building and advised the owners about several upgrades that were required, including new windows.
6. Subsequent to that inspection, a Bylaw Enforcement Officer inspected the building and advised the owners that the use of the building as a Lodging House was neither a Permitted nor Discretionary Use at this location.
7. Ms. Skeffington subsequently met with representatives of the City of Edmonton Sustainable Development Department to seek a remedy to the problem in order to protect the long term tenants who have resided in the very affordable dwelling units for more than 5 years.
8. The tenants all walk to work in the area.
9. The building is very clean and well maintained.
10. It was suggested by the Development Officer that one option to maintain the Lodging House Use would be to rezone the Site but she was also advised that the threshold for the maximum number of Lodging Houses allowed in the area had already been exceeded.
11. She was advised to appeal the refusal to the Subdivision and Development Appeal Board.
12. There are a number of other buildings in this area that have been operating as Lodging Houses for some time.

Ms. Skeffington provided the following response to a question:

1. She confirmed that the building was converted to a Single Dwelling Unit in 1999 for longer than six months.

The Board then heard from Mr. C. Chan, representing the Sustainable Development Department, who provided the following responses to questions:

1. A development permit application to change the Use from four Dwelling Units to a Single Dwelling Unit was issued in 1999.
2. He determined through his search of the building's history that a development permit for a Lodging House had never been issued.
3. He could not provide any information regarding the number of tenants that reside in the building.

Ms. Skeffington provided the following information in rebuttal:

1. She had an opportunity to review the building drawings which indicate that plumbing has never been installed for Dwelling units on the second floor.
2. In her opinion a four Dwelling unit would have been classified as a Lodging House prior to 1999.

**Decision:**

The appeal is **DENIED** and the Development Authority's decision to refuse the permit is **CONFIRMED**.

**Reasons for Decision:**

The Board finds the following:

1. Under Sections 340.2 and 340.3 of the *Edmonton Zoning Bylaw*, a Lodging House is neither a Permitted Use nor a Discretionary Use in the CB2 General Business Zone.
2. The Board heard that the building had been used as a Lodging House for a number of years prior to 1999. In 1999 the building stopped being used as a Lodging House for five or six years, after which time it reverted back to being used as a Lodging House without permits.
4. Section 643(1) of the *Municipal Government Act* states:

If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

5. In this case it appears that a development permit was never issued for a Lodging House and therefore the development cannot be considered as a legal non-conforming use as contemplated under Section 643(1) of the *Municipal Government Act*.
6. Even if a development permit had been issued for a Lodging House prior to 1999, Section 643(2) of the *Municipal Government Act* states:

A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

7. Accordingly, the current use of the subject Site as a Lodging House cannot be considered a legal non-conforming use.
8. Section 687(3)(d)(ii) of the *Municipal Government Act* makes it clear that the Board does not have the power to change the Use prescribed for land in the *Edmonton Zoning Bylaw*.
9. Accordingly, the Board has no authority to allow the appeal.

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**Important Information for the Applicant/Appellant**

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1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. 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.

Mr. M. Young, Presiding Officer  
Subdivision and Development Appeal Board

# **Edmonton Subdivision and Development Appeal Board**

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File Number: SDAB-D-15-143

## **Notice of Decision**

This appeal dated June 10, 2015, from the decision of the Development Authority for permission to:

Change the Use from a Single Detached House to a Limited Group Home and to construct interior alterations

On Plan 5405NY Blk 11 Lot 22, located at 7815 - 160 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 9, 2015. The decision of the Board was as follows:

### **Summary of Hearing:**

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.

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

The Board heard an appeal of the decision of the Development Authority to approve, subject to conditions and variances to allow Tandem Parking and to waive the requirement for a loading space, an application to change the Use from a Single Detached House to a Limited Group Home and to construct interior alterations, located at 7815 – 160 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board:

- A petition opposing the proposed development submitted with the original appeal
- A written submission from the Respondent received on July 3, 2015
- A written submission from the Development Authority received on July 6, 2015
- An additional petition opposing the proposed development received on July 9, 2015

The Board heard from the Appellant, Mr. G. Bolton, who provided the following information:

1. He resides directly north of the proposed development and has lived there for 34 years.

2. The neighbourhood is a quiet, mature residential area consisting mainly of single family homes with no businesses and little non-residential traffic.
3. There is commercial and multi-family development within the broader Patricia Heights Neighbourhood but not west of 159 Street.
4. Up to six residents will be allowed requiring constant supervision. Food and transportation services will be provided resulting in extra service and staff vehicles. Allowing such a business to locate within a residential area would materially change the character of the neighbourhood and increase traffic.
5. He referenced Section 54.1(2)(f) of the *Edmonton Zoning Bylaw* which prohibits tandem parking for group homes. He also referred to the *City of Edmonton Group Home Information and Application Guide* which states that parking places should not be tandem or located in the front yard.
6. The existing building is a split level house with stairs; therefore, he anticipates the residents will be ambulatory and it is entirely possible that they will have vehicles. The possibility of six residents with vehicles, two care attendants and a supervisor would result in parking issues.
7. Tandem parking in general does not work well due to the constant shuffle of vehicles causing people to resort to street parking.
8. This area has no back alleys, most properties have garages accessed by driveways from the front street and there is limited street parking. Street parking in the winter is even more difficult due to windrows created from snow blading and the piles of snow created when entries to driveways are cleared.
9. He feels additional street parking will be required to accommodate visitors to the group home.
10. He emphasized the statement in the Development Officer's submission regarding Section 54.1 of the *Edmonton Zoning Bylaw* which **prohibits** tandem parking and **requires** a loading space.
11. He questioned the statement in the Development Officer's submission which stated that all Limited Group Homes require a minimum of "three off-property parking spaces" and felt this was incorrect.
12. He referenced Section 11.4(1) of the *Edmonton Zoning Bylaw* which states *a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone*. It is his opinion that there is no hardship associated with this property as it is very similar to all of the other homes in the area, therefore no variance should be granted.
13. The property is not suitable for a Limited Group Home, which is essentially a business, and that type of development should not be allowed in this quiet, mature residential neighbourhood.

Mr. Bolton provided the following responses to questions:

1. The relaxation of the required loading space is a problem as a family will not live in the house once it becomes a group home and supplies will need to be delivered to the home. There is no realistic place for a loading space to be located at this property.

2. He feels that grocery shopping for a family is different than shopping for a six person group home as a Limited Group Home is a business rather than a family dwelling.
3. He had attended an open house held by the applicant where he was provided with a hand-out and discussed the proposed development with the applicant.
4. The Appellant is aware that a Limited Group Home is a Permitted Use in this zone; however, he stated that it is only a Permitted Use if a variance is granted.

The Board heard from G. Kluthe, a neighbouring property owner who has lived in the area for 22 years. He provided the following information:

1. He lives two houses away from the proposed development.
2. He believes there is a substantial difference between family shopping and shopping for a group home.
3. Parking is a problem in the area. People have parked vehicles in front of his driveway restricting his ability to exit.
4. The neighbourhood has high windrows in the winter and he questioned where the Respondents would move snow from the existing long, narrow driveway.
5. He had concerns about the proposed tandem parking. He personally found it a nuisance and therefore got rid of one of his vehicles.
6. Approving this development will lead to many other changes in the neighbourhood.

The Board heard from Ms. J. Salmon, a neighbouring property owner who has lived in the area for 17 ½ years. She provided the following information:

1. She is concerned about the variance granted to allow tandem parking. She has a single attached garage with a single vehicle driveway and tandem parking causes nothing but problems, particularly during the winter when vehicles need to be plugged in.
2. The subject property's driveway is extremely long and narrow and drivers will need to pull out into the street to move vehicles.
3. She referenced the neighbourhood elementary school at the end of the crescent. Traffic problems are created at certain times during the day when parents drive through their crescent to access the school.
4. Access to vehicles at the proposed site will always be a problem, which will be exacerbated because the loading zone requirement has been waived.
5. She referenced the family nature of the neighbourhood and felt that a Limited Group Home would mean there would be no transition or growth for that property in an area specifically geared to it.

Ms. J. Salmon provided the following responses to questions:

1. Patricia Heights School is located on 162 Street at the opposite end of the crescent. School parking does not take place at their end of the crescent but parents drive through, primarily before and after school and during special events.

2. She advised that the road through the crescent re-joins 78 Avenue further to the west and that the school can be accessed from that end of the crescent.

The Board heard from Mr. B. Liang, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. He provided an aerial photograph which showed that many homes in this area have long, narrow driveways leading to a rear detached garage (marked Exhibit "A"). Tandem parking is permitted with single family dwellings and is common in this area, therefore a variance for tandem parking is appropriate.
2. The Respondent had advised him that groceries would be delivered twice a week using a personal vehicle. There would be up to two staff present at a time and a registered nurse would be visiting for two to four hours per day. Extra vehicles would only be at the property during staff changes.
3. The residents are unlikely to have their own vehicle because they require care and supervision including help with preparing meals, doing laundry and visiting washrooms.
4. As a Limited Group Home, no medical treatment will be provided at this residence.
5. The Respondent had advised him he anticipates zero to two emergency visits per month.
6. Visitors for the residents will likely be staggered; therefore traffic will be in line with typical family dwellings in this area.

Mr. Liang provided the following responses to questions:

1. He clarified there was a typo in his submission and it should have stipulated that 3 "off-street" parking places are required.
2. The City of Edmonton can only regulate the number of off-street parking places, not the number of vehicles.
3. A loading zone requires an area of 3 by 9 metres to accommodate a commercial truck such as a cube van. The Group Home will have groceries provided by a personal vehicle rather than a commercial truck, therefore a variance was granted waiving the requirement for a loading zone.

The Board heard from the Respondent, Mr. A. Oladimeji, who provided the following information:

1. He is the owner of the subject site and the director of Personal Care Group, which will be running the Limited Group Home. His wife is a registered nurse and she will be attending the site two to four hours per day.
2. The purpose of the home is to house four to six ambulatory adults who need light to moderate care including assistance with groceries, transportation to and from medical appointments and laundry. They plan to provide recreational activities.
3. The Real Property Report of the site shows a rear detached two car garage and a driveway where three additional vehicles could be parked.



4. There will be a maximum of two care givers at a time for the six residents; shift changes may add two additional vehicles for a short time.
5. One vehicle will be kept at the group home for transportation of residents.
6. On special occasions such as birthdays there may be some additional traffic as would be normal for any family home.
7. The home will be run as a single family unit. Groceries will be picked up two times per week in a personal vehicle and will be delivered to the house by the rear door. All laundry will be done on site.
8. This Limited Group Home will not affect the neighbours' use and enjoyment of their property.

Mr. Oladimeji provided the following responses to questions:

1. He confirmed he had held an open house. Although there were negative comments from some neighbours, including some in attendance today, he also received positive comments, including some from neighbours across the road who were interested in moving into the residence.
2. He plans to provide mild to light care for seniors as this is needed throughout the City since most Group Homes cater to those requiring more intensive care.
3. There is room for two vehicles in the garage.

In rebuttal, Mr. Bolton made the following points.

1. He referenced the aerial photograph (Exhibit "A") provided by the Development Officer that marked areas of tandem parking which included his own house. He stated there has never been tandem parking at his house but he often parks on the driveway rather than in the garage.
2. Although the Respondent stated residents will not have personal vehicles, the actual situation may vary from the intent. He noted that the City of Edmonton cannot regulate the number of vehicles at the site.
3. The lack of a loading space and the proposed tandem parking on the long, narrow driveway will cause parking problems.
4. He felt that special occasions would result in many visitors to the Group Home.

**Decision:**

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority.

**Reasons for Decision:**

The Board finds the following:

1. A Limited Group Home is a Permitted Use in the RF1 Single Detached Residential Zone, Section 110.2(1) of the *Edmonton Zoning Bylaw*.
2. The Appellant and other neighbours were concerned that allowing such a development is uncharacteristic of this quiet, mature neighbourhood. The Board notes a Limited Group Home is a Permitted Use in this Zone. The Board further notes that Section 96.2(b) of the *Edmonton Zoning Bylaw* states that the intent is that Special Residential Facilities, including Limited Group Homes, are available in all neighbourhoods.
3. The Development Officer waived the loading space required for this type of development as per Section 54.4(1)(a) of the *Edmonton Zoning Bylaw*. The Board is satisfied that waiving this requirement will not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land because grocery and other personal shopping will be undertaken twice a week through the use of a personal vehicle. This is very similar to the type of activity that is undertaken in typical single family dwellings. Therefore, the waiver of the requirement for a loading zone will not change the nature of neighbourhood in any significant way.
4. The Development Officer granted a variance to Section 54.1(2)(f) of the *Edmonton Zoning Bylaw* to allow Tandem Parking. The Board is satisfied that allowing Tandem Parking will not result in increased street parking for the following reasons:
  - a. There are two parking spaces in the Garage, there are additional parking spaces on the Driveway and the owners of the property will not live there.
  - b. There will be four to six residents living on the property but it is unlikely that any of them will own their own vehicle. Residents will receive assistance with groceries, laundry, personal care and being taken to and from medical appointments. All of this suggests these residents will not be driving themselves.
  - c. There will be a maximum of two staff members attending the property during daylight hours and a registered nurse attending between two to four hours per day. It is unlikely there will be a significant need for Tandem Parking other than at staff change-over times.
5. The Appellant was concerned about additional parking in the neighbourhood on special occasions--such as birthdays, Christmas, etc.--when family members come to visit the residents. That may be the case but this is similar to what occurs in every other residential neighbourhood during such occasions.
6. The Appellant was concerned there might be the need for emergency vehicles to visit the proposed development on a frequent basis. The Board heard no evidence to suggest that this would be the case.
7. One concern was that there is already increased traffic in the neighbourhood because of an elementary school at the opposite end of the crescent. The Board does not believe this is relevant to the proposed development because this school is not in close proximity to the proposed development and there is alternate access available to the school other than through the neighbourhood.
8. There is concern that snow removal in the neighbourhood already creates parking issues in the winter. The Board is satisfied that nothing about the proposed development will worsen this situation.

9. Further, the Board is satisfied, based on the aerial photograph presented in Exhibit “A”, that rear detached Garages with front access Driveways and Tandem Parking are common in this neighbourhood.
10. The Board recognizes this is a business but it will function essentially as a single detached home, therefore it will not have a significant impact on the neighbourhood.
11. For all of the above reasons the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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### **Important Information for the Applicant/Appellant**

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3. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
4. 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.
5. 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.
6. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
7. 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.
8. 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 5<sup>th</sup> 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.*

Mr. M. Young, Presiding Officer  
Subdivision and Development Appeal Board