

Edmonton Subdivision and Development Appeal Board

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Date: January 14, 2016
Project Number: 180756300-001
File Number: SDAB-D-16-005 and
SDAB-D-16-006

Notice of Decision

- [1] On January 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 7, 2015 by adjacent property owners, Mr. D. Abbott (“Appellant 1”) and Co-Appellants, Ms. I. Mierzewski and Mr. E. Mierzewski (“Appellant 2”).
- [2] The appeal concerned the decision of the Development Authority, issued on November 26, 2015, to approve the following development:
- Operate a Major Home Based Business. Admin office for Roofing Company, with materials stored in garage [unedited from the Development Permit]
- [3] The subject property is located on Plan 0522608 Blk 11 Lot 45, municipal description 1264 - McAllister Way SW, within the RSL Residential Small Lot Zone.
- [4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Notice of Appeal letter from Appellant 1, dated and received on December 7, 2015;
 - Notice of Appeal letter from Appellant 2, dated and received on December 7, 2015;
 - One email from an adjacent property owner, dated Dec 7, 2015, with an attached letter, in opposition to the development;
 - Copy of the MacEwan Neighbourhood Structure Plan;
 - Copy of the Development Permit Application and decision of approval, dated Nov 26, 2015;
 - Email correspondence between the Development Officer and Respondent, dated Nov 23 and 24, 2015;
 - Various photographs of the subject site and items stored outdoors;
 - Copy of the violation notice dated December 16, 2015; and
 - Written submissions of the Development Officer, dated Dec 17, 2015.

Summary of Hearing:

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [7] The Respondent did not appear for the hearing, nor did he provide written submissions. The Board notes that a Notice of Hearing letter was mailed to the Respondent on December 18, 2015. After waiting 15 minutes for the Respondent to appear, the Board proceeded with the appeal hearing without the Respondent.

i. Position of Appellant 1, Mr. D. Abbott

- [8] The respondent business moved into the subject property in August 2015. Prior to the issuance of the permit in November, neighbours already had many questions about the subject property, due to the noise from the business activities. The current activities are inconsistent with the conditions as set out in the approved permit.
- [9] The business is storing materials in the garage, and removing them at various points during the day. The operation of the business has made the subject property a rendezvous point for the company as workers come and go to transport materials. Having trucks and trailers coming in and out causes safety concerns for children.
- [10] There have also been up to four vehicles at a time parked at the residence, including trucks with trailer equipment attached. The parking is also done in such a way that the truck is on the driveway while the trailer extends out onto the street, blocking the sidewalk completely. Trailers are also left unattached on public roadways.
- [11] He has seen piles of equipment and materials sitting outside the property and on the driveway. In his opinion, this particular type of business is more suitable for a light industrial area. If the business wishes to store materials, they can rent a storage unit. When questioned, he confirmed that materials stored outside the home as shown in the photographs submitted by the Development Officer remain on site.
- [12] In one incident, the business used the garage as a fabrication shop in the early hours of the morning, disrupting the neighbourhood. This was in violation not only of the permit conditions, but also Section 75(2) of the *Edmonton Zoning Bylaw*, which states:

A Major Home Based Business shall comply with the following regulations: ...there shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;

[13] He has not spoken with the applicant to determine whether the business can operate in an alternative manner so as to comply with the permit. However, he works in the construction industry, and the winter months are actually a slow period for the roofing companies.

ii. Position of Appellant 2, Ms. I. Mierzewski and Mr. E. Mierzewski

[14] They stated that children will run across the street when playing outdoors, and the movement of vehicles generated by the business gives rise to safety concerns. They submitted Exhibit "A", a series of 20 photographs showing young children participating in community activities, and the safety, parking, and access concerns raised by the respondent business activities. The subject business should have considered these factors and purchased a house with a detached garage in a back alley, which would minimize some of these impacts.

[15] A set of photos dated December 7, 2015, showed three consecutive incoming vehicles struggling to navigate around the illegally parked truck with attached trailer. One photo dated December 4, 2015, showed a large vehicle parked on a snow pile in the cul de sac. Other photos from December 9, 2015 and January 3, 2015 showed storage of materials, some flammable, outside the home.

[16] The Appellant noted that the site is a natural congregation point for employees, including social events and alcohol consumption.

iii. Position of Adjacent Property Owner, Mr. J. Motyka

[17] He acknowledged that the City has been placed in a difficult position, as the information provided by the applicant and upon which the Development Officer based his position was clearly inaccurate.

[18] Suburban residential neighbourhoods are characterized by young families with children. With a truck and trailer blocking the sidewalk, children will have to run into the middle of the street to get around the vehicles when visiting neighbourhood friends or going to the park.

[19] There is also a playground several doors down from the subject property frequented by neighbourhood families. When questioned about this playground, he identified the MacEwan Park, a large area south of the subject property and which is within the 60 metres notification area.

[20] The applicant is effectively running a significant industrial company out of a suburban residential home.

iv. Position of the Development Officer, Mr. K. Bacon

- [21] He stated that his decision was based on the information given to him by the applicant. However, the information provided by the appellants indicate that the applicant is not complying with the conditions of the approved permit.
- [22] He acknowledged that the nature of such types of businesses would require regular pickup and dropoff of materials from the base of operations. However, his understanding had been that only half the garage would be needed for the storage of materials, and that the applicant would be picking up materials from another location, then dropping them off at the job site.
- [23] Regarding the Violation Notice issued December 16, 2015, the compliance officer is awaiting the outcome of the appeal hearing, but should the Board refuse the permit, the officer could visit the subject site immediately for enforcement purposes.
- [24] When questioned about the information supplied on the application form, he acknowledged that the business email and address could indicate a base of operations from Calgary, suggesting that the development may not be appropriate for a home based business.

v. Rebuttal of Appellant 1, Mr. Abbott

- [25] The Neighbourhood Area Structure Plan does not contemplate industrial uses within this type of zoning, particularly as there are small lots where homes are close together and which can exacerbate the safety, traffic and parking concerns raised by the respondent business.

Decision:

- [26] The appeal is GRANTED and the decision of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision:

- [27] The proposed development is for a Discretionary Use in the RSL Residential Small Lot Zone.
- [28] The Respondent had indicated on his application that no outdoor storage would occur, nor would there be any trailers or equipment associated with the business at the subject site. However, based on both the information provided in the violation notice, and on the photographic and testimonial evidence received at the hearing, the Board finds that

outside storage is occurring, and that a trailer is located at the residence on an ongoing basis.

[29] The business activities occurring on the subject property are in violation of several conditions of the permit, including the following development regulations:

- 1) Section 7.3(7) indicates that “The business use [of a Major Home Based Business] must be secondary to the residential Use of the building and shall not change the residential character of the Dwelling or Accessory building.”

The Board finds that the business operations on the subject site are more prominent than indicated by the Respondent in his permit application, changing the residential character of the Dwelling in contravention of Section 7.3(7).

- 2) Section 75(3) states: “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”.

The Board finds that the increased vehicular traffic and parking are excessive and atypical of the RSL Residential Small Lot zone.

[30] In addition, the permit states that “The site shall not be used as a daily rendezvous for employees or business partners”, and that “Fabrications of business related materials are prohibited.” The evidence presented before the Board indicates that fabrication has occurred at least on one occasion within the garage, and that the nature of the business is such that the subject property has become a daily rendezvous point for business employees to obtain further materials for their activities.

[31] For the above reasons, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially affect the use and enjoyment of neighboring parcels of land. The development permit is therefore refused.

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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;

- d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 12800*, as amended.
 5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
 6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Date: January 14, 2016
Project Number: 083076455-006
File Number: SDAB-D-16-008

Notice of Decision

- [1] On January 6, 2016, the Subdivision and Development Appeal Board (“SDAB”) heard an appeal that was filed on December 7, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on November 30, 2015, to approve the following development:
- Move on an office trailer and to operate an Automotive and Minor Recreational Vehicle Sales/Rentals Use. [unedited from the Development Permit]
- [3] The subject property is located on Plan 5733HW Blk 9 Lot 3, municipal description 8230 - 112 Avenue NW, within the CB1 Low Intensity Business Zone and within the Stadium Station Area Redevelopment Plan (“ARP”).
- [4] The application was refused for the following reasons:
- The existing trailer, fence and port-a-potty encroach into the City owned right-of way;
 - The existing display area is not permitted within the required Setback;
 - Storage, display or parking areas have not been hardsurfaced in accordance with the Zoning Bylaw;
 - Lighting for the site needs to be described;
 - There are no clearly designated parking spaces; and
 - There are deficiencies in loading space, bicycle parking and landscaping requirements.
- [5] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Appellant’s Notice of Appeal form, filed online on December 7, 2015;
 - Copy of the Stadium Station ARP;
 - Copy of an email from SDAB administrative staff, dated Dec 8, 2015, requesting clarification for the Appellant’s reasons for appeal;
 - Copy of Appellant’s reply email, dated Dec 8, 2015, with an attachment of the refused Development Permit and no further explanation;
 - Copy of the Refused Development Permit, issued Nov 30, 2015;
 - Copy of a Canada Post confirmation receipt of the Permit decision, showing a delivery date of December 4, 2015; and
 - Written submissions of the Development officer, dated Dec 10, 2015, with three attachments of Google Maps images and two pages from the Stadium Station ARP.

Summary of Hearing:

- [6] 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.

- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [8] The Appellant did not appear for the hearing, nor did he provide written submissions. The Board notes that a Notice of Hearing letter was mailed to the Appellant on December 18, 2015. In addition, email records indicate that SDAB administrative staff had sought to obtain more information from the Appellant about his reasons for appeal, to which the Appellant replied on December 8, 2015 with an attachment of the refused Development Permit with no further explanation.
- [9] SDAB administrative staff also attempted to contact the Appellant on the day of the hearing, but was redirected to the Appellant's voicemail service. After waiting 15 minutes for the Appellant to appear, the Board proceeded with the appeal hearing without the Appellant.

i. Position of the Development Officer, Ms. E. Peacock

- [10] The operation of the site for an Automotive and Minor Recreation Vehicle Sales/Rentals Use was originally approved in 2008 as a temporary three-year permit. The business has been operating at the subject site since the permit expired in 2011 as an auto sales company. The property is associated with various enforcement files.
- [11] On July 20, 2015, a violation notice was issued for the business, as it had been operating for four years with an expired development permit. When questioned about this, she clarified that in 2013, an error occurred wherein someone issued a business licence without a valid development permit. By August 18, 2014, the licence had been cancelled, but there was a period of time that the business operated with a licence, but without a valid development permit.
- [12] In October 2015, the Appellant applied for a permanent Development Permit. However, the application was refused due to various deficiencies as laid out in the Development Permit decision and as outlined in paragraph 4 (above). The Development Officer also noted that based on aerial and site photos, the vehicles that appear to be on sale are spread out over the entirety of the property rather than designated parking spots.
- [13] The Development Officer indicated that, after being advised that the plans did not comply, the applicant submitted revised plans for consideration. However, although the revised plans did comply with the regulations, the applicant was of the view that they would make the business non-viable. As such, the applicant requested that the original plans should be the ones used for the appeal to this Board.
- [14] The Development Officer submitted Exhibit "A", which showed that the subject property is approximately 145 metres away from the Stadium LRT platform. A walkable

pedestrian network running adjacent to the platform is desirable, and the vehicles coming to and from the automotive sales car lot could limit walkability. The area is also busy during the day, particularly during special events.

- [15] In addition, according to the Enhanced Neighbourhood Land Use and Intensity Guidelines, auto oriented site design is not appropriate to ground floor retail sites within 200 metres of the platform. She acknowledged that although the guidelines are not statutory plans, they are a consideration when reviewing such applications.
- [16] Section 3.5.1 of the Stadium Station Area Redevelopment Plan (“ARP”) states:

It is the intent of this Plan to provide an area for medium rise apartment residential development with ancillary commercial uses and recognize potential for community oriented facilities.

The residential area is to be protected from the impacts of Northlands operations and arterial road traffic (e.g., noise, visual) through Site Design guidelines, landscaping and buffering are encouraged.

The commercial portion of North Cromdale west of 82 Street will be limited to neighbourhood commercial uses.

In her opinion, the proposed development does not meet this rationale.

- [17] In addition, Section 3.5.5 of the Stadium Station Area Redevelopment Plan (“ARP”) states:

The area north of 112 Avenue between 82 Street and the CN/LRT line will be developed for low intensity commercial uses. The property at the northeast corner of 82 Street and 112 Avenue shall be developed for community-oriented commercial uses. Commercial redevelopment in other portions of the North Cromdale sub-area shall be restricted to mixed-use residential-commercial buildings.

The Development Officer explained that the previously approved temporary permit was reasonable at the time because adjacent properties were vacant or not fully developed. However, there is now apartment housing across from the LRT line that abuts the subject site’s west property line. To the north is a building containing an auto-body shop (which is a prior non-conforming use), and the Royal Canadian Legion Norwood Branch building is located to the south. In her opinion, the proposed development is not consistent with the “low intensity commercial uses” that have developed in the area.

- [18] In her mind, an appropriate low intensity commercial use class within the zone would be a general retail store, which would not have apparent traffic or business being conducted outside the store. Other appropriate neighbourhood commercial uses might be convenience stores or medical offices serving the day-to-day needs of residents. By

contrast, although automotive sales is a commercial use, one does not generally visit such a business on a day-to-day basis.

Decision:

[32] The appeal is DENIED and the decision of the Development Authority is UPHELD. The development is REFUSED.

Reasons for Decision:

[33] Under Section 330.3(5), Automotive and Minor Recreation Vehicle Sales/Rentals is a Discretionary Use in the CB1 Low Intensity Business Zone.

[34] The Board finds that the business has been operating without a Development Permit since 2011.

[35] According to the Stadium Station ARP, Section 3.5.1 states that the commercial portion of North Cromdale west of 82 Street (which is where the proposed development is located) will be limited to neighbourhood commercial uses. Further, Section 3.5.5 states that the area “between 82 Street and the CN/LRT line will be developed for low intensity commercial uses.” It is the opinion of the Board that the proposed development for automotive and minor recreational vehicle sales is not a neighbourhood commercial use nor is it a low intensity commercial use. Accordingly, it does not comply with the ARP.

[36] Area Redevelopment Plans are included in the definition of “statutory plans” in Section 616 of the *Municipal Government Act*. Section 687(3)(a.1) of the MGA states that, in determining an appeal, the Board must comply with, among other things, statutory plans. Although the proposed Use is a discretionary Use in this Zone, the Board is of the view that the provisions of the Stadium Station ARP referred to above indicate that the Board should not exercise its discretion to allow the proposed development at this location.

[37] In any event, there are a number of other reasons why the Board had decided not to allow the appeal as discussed below.

[38] As noted in the Development Permit, the subject property’s trailer, fence and port-a-potty encroach into the City owned right-of-way. Under Section 15(7) of the *Edmonton Zoning Bylaw*, the Development Officer may impose conditions requiring the applicant to mitigate the impact of the encroachment. The Development Officer has required that “A licence of occupation” be obtained. No evidence was produced to indicate that the applicant has obtained such a licence.

[39] Section 330.4(3) requires a minimum Setback of 3.0 metres. Section 330.4(5) further states that “No parking... or display area shall be permitted within a Setback.” Based on the information provided by the Development Officer and in the Development Permit, the

Board finds that there are no existing setbacks on the site, as vehicle displays are being parked within the Setback area.

[40] Section 330.4(5) also states, in part:

Vehicular parking, loading, storage and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways or Light Rail Transit lines in accordance with the provisions of subsection 55.4 of this Bylaw. If the rear or sides of a Site are used for parking, an outdoor service or display area or both, and abut a Residential Zone or a Lane serving a Residential Zone, such areas shall be screened.

The Board finds that insufficient space has been provided on site for storage and trash collection areas. In addition, based on photographic evidence submitted by the Development Officer, there is insufficient screening from adjacent Sites, public roadways or LRT lines.

[41] In contravention of Section 330.5(2), hardsurfacing has not been completed, and the Development Officer's written submissions indicate that she was unable to identify whether the lighting that has been provided is that which is required under Section 330.5(2).

[42] Finally, with respect to the landscaping requirements under Section 55.4(1) and 55.7(1)(a), no landscaping plan was submitted by the Appellant to demonstrate that the deficiencies in trees and shrubs have been remedied.

[43] Accordingly, it is the opinion of the Board that the proposed development is inappropriate for the location, and the appeal is denied.

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Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board