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Subdivision & Development Appeal Board

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Date: January 25, 2017
Project Numbers: 235624962-001 / 235624894-001
File Number: SDAB-D-17-011/012

Notice of Decision

[1] On January 18, 2017, the Subdivision and Development Appeal Board (the "Board") heard two appeals that were filed on December 20, 2016 and December 23, 2016. The appeals concerned the decisions of the Development Authority, issued on November 28, 2016 and December 6, 2016, to approve the following developments:

Place a Temporary Sign for 90 days ending 19-MAR-2017 for EFFECTIVE SIGNS & GRAPHICS (Multi: WESTGATE MALL #2)

Place a Temporary Sign for 90 days ending 19-MAR-2017 for EFFECTIVE SIGNS & GRAPHICS (Multi: WESTGATE MALL #1)

[2] The subject property is on Plan 0928218 Blk 30 Lot 10, located at 17010 - 90 AVENUE NW, within the DC2.746 Site Specific Development Control Provision. The Summerlea Neighbourhood Area Structure Plan applies to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submissions; and
- The Appellant's written submission.

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

- Exhibit A – Photograph of the Sign submitted by the Respondent; and
- Exhibit B – Aerial map of the area submitted by the Appellant.

Preliminary Matters

[5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted. File number SDAB-D-17-011 and File number SDAB-D-17-012 would be heard concurrently.

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

Summary of Hearing

i) Position of the Appellant, Mr. Kennedy, KENNEDY, representing West Edmonton Mall

[8] Mr. Kennedy submitted his client is concerned with the type of sign and the mechanism by which it was approved. The Development Officer exercised her variance powers contrary to City Council's intent set out in the DC2 Site Specific Development Control Provision (DC2).

[9] He referred the Board to his submission.

[10] Direct Control Zoning is a specific agreement between an owner and City Council. The *Edmonton Zoning Bylaw 12800* is referenced several times along with the word "shall".

[11] The DC2 states that one of the Permitted Uses is a Temporary On-premises Sign. This is not a Discretionary Use, this is a Permitted Use. Further, DC2.746.4.j states that "Signs shall be developed in accordance with Schedule 59E". Most DC regulations do not reference a section of a current Bylaw and at times reference just the signage Bylaw. The policy is to go to the current Bylaw which references Schedule 59E at the time of the DC in 2009.

[12] The signage Bylaw has changed since 2009 and due to the new Bylaw you must look back to what was regulated at that point.

[13] From the 2009 Bylaw and Schedule 59E, "the maximum duration for each Temporary Sign location shall be 180 days in a calendar year, provided that no Temporary Sign shall remain in a location for more than 90 consecutive days, during which unlimited changes to the Copy of the Signs shall be allowed. Following each removal of a Temporary Sign, the location shall remain free from Temporary Signs for a minimum of 30 consecutive days."

[14] You can have a sign for 3 months and then there must be 30 days in between before the next sign is allowed. The intent is for "temporary" signage.

[15] The variance is being appealed because the Respondent has been applying for this for 7 years back to back. The Respondent is not using this application to waive the variance for the 30 days or the 180 day maximum per year. They have had a continuous Temporary Sign on this location for 7 years.

[16] Mr. Kennedy referenced the regulations for Temporary Signs in Section 13.4 from the 2009 Bylaw. The Application must include a scaled Site Plan including information on the location of curb lines, property lines, and location of driveway access points. That is the most stringent piece of the regulation for a Temporary Sign.

[17] Council intended this particular Sign Class provided that it should not remain in a location for more than 90 consecutive days and the location shall remain free from Temporary Signs for a minimum of 30 consecutive days.

[18] He read the requirements for a sign that is to be used permanently and has been permanently located on the property. His client does not have an issue with a permanent sign that has been applied for under the proper channels.

[19] The Respondent has used the Temporary Sign and the variance powers of the Development Officer to allow the use for a Temporary Sign without all the regulations present.

[20] The submission showed an example of the type of sign that is being applied for.

[21] The Appellant will continue to appeal any Temporary Sign with a variance as it does not follow the DC2 in 2009.

[22] In response to questions by the Board, Mr. Kennedy stated that he could not confirm if there is a permanent Freestanding Sign on the subject Site.

[23] He could not confirm if the proposed Sign has been previously appealed.

[24] With regard to the year the Bylaw changed, he stated that whether or not there were any breaks, an application would be made for a 90 day sign. However, because the first sign did not have a variance, a temporary sign can be applied for. For a second application for days 91 to 180, a variance would be needed because there was not a 30 day break. That would be the first variance on the second application. On day 181, that application had a variance of the 30 days and now adding it to the 180 days it moves to the 270 day range of that year. Therefore, every application since then has had those two variances waived.

[25] With regard to the Development Officer's variance powers, he stated that from the Development Officer's perspective, if there are no concerns and helps businesses in the area, there is no issue. However, in their opinion, the Sign should be applied for as a permanent Sign.

[26] He agreed that the Development Officer has variance powers.

[27] He was asked if relying on the wording in the regulations that the word 'shall' indicates that City Council has taken that discretion away from the Development Officer. He stated that he believes the Development Officer has the discretion if there are no complaints and if a variance will not affect the neighbourhood. In his opinion, a variance should not have been granted for 7 years. His client has not appealed any of the Temporary Signs before because it was always a discretionary notification. They would like to see the sign with the proper permit.

[28] The Board has to determine whether or not the Development Officer's variance powers were used correctly and in accordance with what City Council intended. Regarding the Bylaw in 2009, Council did not intend to have Temporary Signs to be used for 7 years.

ii) Position of the Development Officer, Ms. Daum who was accompanied by Mr. Adams

[29] The Development Officers did not have a presentation but would answer questions from the Board.

[30] They agreed that the variance has been approved for the Temporary Sign for several years. The Development Officers advised the Board that when an application is received for a Temporary Sign, each application is considered as a new application. If variances are required for a new sign based on signs that have been applied for previously, they will look at it as a separate application.

[31] They confirmed that they are able to determine if there has been a previous sign application for a specific site.

[32] They reviewed the map of the sign locations on the subject site. Applicants are required to submit a map showing sign locations on site. Although the map shows more than one sign, the Applicant uses the same map when making a new application so the map will show previous signs on the site. The confirmed that the Applicant is able to move the sign to the different locations shown on the map.

[33] They confirmed that they are able to track the time period between signs through the POSSE system to see previous sign applications and if it meets the 30 days or not.

[34] They confirmed that a sign is allowed for 180 days on the site no matter where it is located. The 180 days is for a specific sign location outlined in Sign Schedule 59E in 2009. The 30 days is applied to the site as a whole.

[35] They confirmed that although it is one site, if the sign is moved around it is possible to get more than 180 days for that site but not that location. The Bylaw for a Temporary Sign has changed over time and the variances were specifically looked at to bring them more in line with the current *Edmonton Zoning Bylaw* Sign Schedules. The Development Officers' conceded there may be inconsistencies with the Bylaw from past versions of same.

[36] With regard to the signs being continually approved and can go on for 365 days a year but are not moving on the site, the Development Officer stated that the current Sign Schedule 59E for a Temporary Sign will be allowed for 365 days a year. The abutting CSC Shopping Centre Zone also references Schedule 59E and 365 days a year. This variance is looking at where the Sign Schedule is currently and where there may be a hardship to a developer that has an older DC2 zone and bring it more in line with the current Sign Schedule.

[37] The Development Officers confirmed that there is a difference between Temporary and Permanent Signs. The definition of a Temporary Sign is if it can be removable or moved around a site so there is the possibility in the current *Edmonton Zoning Bylaw* to maintain a sign for 365 days by moving them from location to location as long as they apply for a Development Permit. A Permanent Sign would be more of a substantial structure and permanent structure with its own separation distances and regulations. When they look at the *Edmonton Zoning Bylaw*, they look at the structure of the sign and the regulations they are in. If it is permitted in an area, the sign could be there for 365 days and would be considered temporary.

[38] They were asked to comment on the two different types of signs and the time limits and the interpretation of Council's intent. They stated that Sign Schedule 59E permits a sign for 365 days a year which could be Council's intent from the way that regulation was written. In the 2009 Bylaw, there is a maximum of 180 days per year and 90 days at one time with a 30 day separation in between signs. They used their discretion to bring it more line with the current *Edmonton Zoning Bylaw* and Council's direction.

[39] With regard to the 2009 Bylaw and the current Bylaw, he stated that Sign Schedule 59E referenced the *Edmonton Zoning Bylaw* as it was in effect at the time. There is the variance power and the Development Officer felt it was appropriate to issue variances and bring it more in line with the current *Edmonton Zoning Bylaw*.

[40] They were asked if this process is different than looking at that specific DC. They stated that there have variances issued for Temporary Signs in similar situations where there is no specific direction to not follow that. Some DC zones have given direction specifically within the wording of that DC zone for Temporary Signs and many will reference a Sign Schedule or a section of the *Land Use Bylaw* that predates 2002.

[41] They could not confirm if there are any permanent signs on the subject Site.

iii) Position of the Respondent, Mr. Fitzpatrick, representing Effective Signs & Graphics

[42] He is employed by Curbex Media who owns representing Effective Signs & Graphics.

[43] The application is about interpretation of the Bylaw which is the same in Calgary or other Cities.

[44] The signs have been applied for correctly under the *Edmonton Zoning Bylaw* and he is not sure why there is a concern regarding the signs.

[45] He submitted a photograph of a standalone sign and the proposed sign is a graphic sign that is maintained.

[46] They are willing to remove the sign to meet the 30 day requirement if needed. However, in his opinion, if the Bylaw is interpreted correctly they are not doing anything wrong.

[47] He has paperwork from the client for this sign and how the signs work for the business and generate revenue. His company only supplies the product that the customers want.

[48] He referenced the photograph and stated that he is not certain if there are any permanent signs on the site. He is only aware of the area of the proposed signs.

[49] The Respondent submitted that the signs do not have a visual impact on traffic.

[50] In response to questions by the Board, he stated that the signs will be in the same spot with the copy changing.

[51] He stated the signs have been there for 90 days with 2 separate Development Permits for the structure. There will be a new copy every 30 days.

[52] It is the interpretation of the Bylaw that if they are not taking down the sign after 30 days they will move it. The sign has not been there for 7 years.

iv) Rebuttal of the Appellant, Mr. Kennedy

[53] He submitted a Google map showing that it appears there are currently 5 signs on the subject site.

[54] He clarified if a sign can be move or a new application is required. He stated that the *Edmonton Zoning Bylaw* is for the site not the location on the site and this approved permit has 2 variances and is demonstration of that. If a sign can be moved 100 feet over and reapply for a restart in timing there could be perpetual signs on the site because there will always be a restart . The intent of the Bylaw is that the signs are temporary.

[55] The signs are regulated by a standard regulation that does not take into account architectural and consideration for site lines that a permanent sign does.

[56] They are concerned that this is not an appropriate use with a variance to take a Temporary Sign and reference the current Sign Bylaw because this Sign Bylaw references Sign Schedule 59E in 2009. Council inserted that specifically so they referenced that set of guidelines for this property so all the other regulations in the DC apply until the Applicant rezones the property.

[57] There are several opportunities for Temporary and Permitted Signs. Permanent Signs have specific regulations. The Development Officer is allowing a Permanent Sign Use without any of the accompanying regulations.

[58] The variance has been perpetual and this is an inappropriate Use of the variance.

[59] In response to questions by the Board, he stated that the 2009 Sign Schedule 59E refers to 180 days in the calendar year. If the calendar year started now, what happened in the past cannot be used.

[60] He does not believe that is the way the Bylaw is interpreted otherwise they would not be granting the variances, that was done when the Sign was applied for. Now that it is a new calendar year that may give them the 180 days. He believes the Board is to regulate at the time of application or if the Board refuses the Development Permit application the Applicant can make another application.

[61] The Board needs to focus on the regulations of the DC. Council had specific intent for this site and if Council made changes to the Bylaw and the Sign Bylaw, it does not move forward. The Development Officer cannot look at what future Bylaws may be, they need to get the current information.

Decision

[62] The appeals are DENIED and the decisions of the Development Authority are CONFIRMED. The developments are GRANTED with conditions as approved by the Development Authority.

Reasons for Decision

[63] The proposed Signs are Listed Uses in the DC2.746 Site Specific Development Control Provision.

[64] Section 641(4)(b) of the *Municipal Government Act* states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[65] Accordingly, the Board cannot vary the decision of the Development Officer unless it concludes that the Development Officer failed to follow the directions of Council. To determine what the directions of Council are, the Board must look to, among other things, the provisions of the DC1. DC2.746.4.j states "Signs shall be developed in accordance with Schedule 59E."

[66] Section 11.3(1)(a) of the *Edmonton Zoning Bylaw* states that in approving a Development Permit Application pursuant to Section 11.2, the Development Officer shall adhere to the following: 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.

[67] Based on the evidence submitted, it would be improper to make a judgement on the application of the Development Officer's use of her variance power. There are two principal reasons supporting this decision:

1. In the decision of the Alberta Court of Appeal in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309, at paragraph 8, the court references Section 720.3(3) which states "all Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision." The Court held that the "mere listing of a series of permissible uses does not "specifically exclude" other general provisions of the Bylaw. The logic of this argument would exclude the application of all generic rules, which could not have been intended." **Therefore it follows that the Development Officer's general variance powers found in Section 11.3(1)(a) apply in this case.**

2. DC2.746.4.j states "Signs shall be developed in accordance with Schedule 59E." Sign Schedule 59E allows for Temporary Signs to be in place for a limited duration. Under Section 6.2(27), "Temporary Signs means any On-premises or Off-premises Sign that is **relocatable or removable** [emphasis added by the Board] from a Site and used for advertising of a limited duration." These are Temporary Signs and notwithstanding that the signs may have been at the site for 7 years, are temporary by definition.

[68] Based on the evidence submitted, the Board finds that the Development Officer followed the directions of City Council outlined in the DC2.746 Site Specific Development Control Provision.

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

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*, 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.

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Date: January 25, 2017
Project Number: 221254882-005
File Number: SDAB-D-17-013

Notice of Decision

[1] On January 18, 2017, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **December 21, 2016**. The appeal concerned the decision of the Development Authority, issued on December 19, 2016, to refuse the following development:

Change the Use of a Single Detached House to a Duplex House

[2] The subject property is on Plan RN39A Blk 5 Lot 9, located at 11142 - 125 STREET NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the West Ingle Area Redevelopment Plan apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions; and
- Submission from the Appellant.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

At the onset of the hearing the Presiding Officer asked the Appellant, Mr. Wilson, if anything has been constructed on the property. Mr. Wilson stated that the building is under construction but the permit is for a basement development and not a Secondary Suite until the appeal process is finished. Mr. Wilson is asking the Board to determine if the proposed development is for a Secondary Suite and not a Duplex.

i) Position of the Appellant, Mr. Wilson

[7] He purchased the property because it is a good location for a Secondary Suite and is in close proximity to transportation and amenities.

[8] The City is encouraging higher density developments. The subject Site is within the RF3 Small Scale Infill Development Zone. There are other multi-family dwellings on the street.

[9] There are several large lots in the area that are 132 feet deep and the subject site is 150 feet deep. The site is still deficient for the required size for a Secondary Suite by 3.4 percent.

[10] When designing the proposed development they were considerate of the character of neighbourhood and the older houses that have front verandas.

[11] They wanted a Secondary Suite so they developed a front staircase to keep it in style with front verandas as shown in TAB 2 of his submission.

[12] Although the front looks as though there is a veranda, the large windows in the basement facing the street are an issue.

[13] He made the development permit application prior to the lot being subdivided.

[14] He referred to TAB 3 of his submission, the blockface calculations that were done by a surveyor, and the Plot Plan.

[15] He was not sure how the blockface was set and the average distance and he believes the surveyor was unsure as well.

[16] Using the abutting lot north and south of the subject site, the average distance is almost the same for the entire street.

[17] That calculation was used for the building within what was a non-variance for the lot.

[18] He spoke to the Development Officer and he believed he did not err in using the south lot in determining the calculation because the lot north of the subject site is vacant.

[19] The main issue is the front facing door. When he designed the house he did not think it would be an issue since Section 86.4 of the *Edmonton Zoning Bylaw* states that a Secondary Suite shall be developed in such a manner that the exterior of the principal building containing the Secondary Suite shall appear as a single Dwelling. In his opinion, the door to the Secondary Suite is underground and does not look like a Duplex.

[20] The only section of the Bylaw they were not able to meet was Section 7.2(7), the Use Class for a Secondary Suite that states that a Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. In his opinion, they were trying to follow the intent of the Bylaw by making it like more like a veranda than a front entryway.

[21] He referred to TAB 6 of his submission, a map of the street and the highlighted area are all multi-family houses. Photographs show Semi-detached houses on the street. Even if the house that looks like a Duplex, it is not out of character of the area. These developments are allowed in an RF3 Low Density Development.

[22] He believes all the other reasons for refusal are for a Duplex and do not apply to the proposed development.

[23] In response to questions by the Board, Mr. Wilson confirmed that the parking area shown on the plans is a garage pad. He has not made an application for a garage. He would like to build two separate garages. He believes the garages will be deficient by a few feet but can modified if needed.

[24] With regard to the basement plan, he stated that the stairs go from the side to the front steps. They were designed that so the building could be used without the Secondary Suite if needed. If the Secondary Suite is not approved they can use it as part of the main dwelling. There is not a good place to enter the building other than the front.

[25] The left side on the plan shows that the staircase and door area almost underground and that the railing is spindle so you can see part of the door through it. The door faces the street.

[26] The house will be built to sell whether it is a Duplex or a Secondary Suite. However, if the Secondary Suite is not approved he will keep it as a Single Family Dwelling.

[27] He confirmed that the stairs will be removed if it is sold as a Single Family Dwelling.

[28] He confirmed that the blockface was used from the house down the street since the lot next to the site is vacant. That is what he has done in the past. The surveyor determined where the house will be located on the site.

[29] He confirmed that the house that was on the lot was demolished.

ii) Position of the Development Officer, Mr. McArthur

[30] There is no variance to the front Setback on the principal building or the Secondary Suite application.

[31] When calculating the front Setback, it must be taken within the general context of the blockface of the abutting lots. Taking all the lots that face the flanking, then take the average of the 2 abutting lots, this ends up creating 2 different range categories when you add the 1.5 metres in either direction. You get a 3 metre radius from the average, 3 metre radius from abutting and take the inside number of those 2 to create the allowable front Setback.

[32] For the house combo, the lower range number was 7.4 metres. On the site plan to the Setback foundation is 7.4 metres and within the allowable.

[33] Under the original house application the additional roughly 1.3 metre is a window well, which is below grade feature and does not apply to Section 44.

[34] The application for a Secondary Suite converted that window into the entrance discussed, and Section 44 lists it as unenclosed steps and treated as a projection and allowed to go 0.6 metres or 2 feet within the allowable Setback.

[35] With regard to changing the front and if he has variance powers, he stated that to allow the stairs to go down and the projection in the front he can vary Section 44.

[36] Parking was not a reason for refusal, however, the garage application is under review and parking spaces will be deficient in length by 0.26 metres but that can be fixed.

[37] The projection versus the setback more fits the category for projection because the setback for items such as eaves, veranda projection into the Setback on the house. The eaves can project 0.6 metres into that.

[38] The unenclosed step to the Secondary Suite for projections is 0.6 metres to the setback beyond that 7.4 metres setback to 6.8 metres.

[39] Distance from the front property line to that feature is 0.75 metres.

[40] If the Applicant builds the development as a Single Family Dwelling the garage will comply.

[41] Under Schedule 1, Secondary Suites require a separate parking space and can be tandem and 4.88 metres in length.

[42] He referred to Section 11 and what they are allowed to vary.

[43] Secondary Suites specifies a separate entry or rear/side entry but not a front entry.

[44] Under the Secondary Suite definition, there must be a separate entrance from other dwellings on the rear or the side.

[45] The subdivided lot is 347 square metres in size and with a Secondary Suite is required to have 360 square metres.

iii) Rebuttal of the Appellant, Mr. Wilson

[46] He was uncertain how to calculate the blockface.

[47] Even with the projection he believes the development is in compliance with the Bylaw and that should be taken into consideration when looking at the front.

[48] The blockface of the lot is not above any of the lots on the street.

[49] With regard to if he will keep the front entryway if there is no Secondary Suite, he stated that he is not aware of any regulations stating that you cannot have a front facing family entryway and no reason not to apply for that since there is no variance needed. He would like to keep that entryway even if a separate application is required.

Decision

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

Reasons for Decision

[51] Based on the plans and the evidence by the Appellant, the proposed development was to have a front entrance and such front entrance is not permitted by definition of a Secondary Suite.

[52] Under Section 7.2(7), a Secondary Suite means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal Use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. **A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure.** This Use includes the development or Conversion of Basement space or above Grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use does not include Apartment Housing, Duplex Housing, Garage Suites, Garden Suites, Semi-detached Housing, Lodging Houses, Blatchford Lane Suites, Blatchford Accessory Suites, or Blatchford Townhousing. [emphasis added]

[53] Section 687(3) of the *Municipal Government Act* states in determining an appeal, the subdivision and development appeal board

> (a) 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,
>
> and
>
> **(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw. [emphasis added]**

[54] The Board is restricted by the *Municipal Government Act* as cited above in varying the definition of a Secondary Suite and accordingly the appeal is denied.

[55] The Board accepts the submission of the Appellant that he does not want the development to be classified as a Duplex.

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*, 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.

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.