



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 11, 2016  
Project Number: 117793928-007  
File Number: SDAB-D-16-174

**Notice of Decision**

- [1] On July 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 29, 2016. The appeal concerned the decision of the Development Authority, issued on June 27, 2016, to refuse the following development:

**Construct exterior alteration to an existing Single Detached House (pergola 10.36 m x 4.26 m).**

- [2] The subject property is on Plan 1026369 Blk 3 Lot 42, located at 236 - Callaghan Drive SW, within the RSL Residential Small Lot Zone. The Callaghan Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- The Appellant's reasons for appeal with photos attached;
  - Revised Site drawings;
  - The uncovered deck permit application;
  - The Refused Development Permit with attachments;
  - Canada Post delivery confirmation;
  - The Development Officer's written submissions; and
  - The Callaghan Neighbourhood Area Structure Plan.

**Preliminary Matter**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

**Summary of Hearing***i) Position of the Appellant, Mr. R. Paneer Selvan*

- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] He is applying for a permit for the proposed pergola due to the slope of his property. The base of the pergola is meant to provide an even surface that will compensate for the sloped Grading of the subject Site. Due to this slope, he cannot make normal use of the property.
- [9] The pergola will also provide a means of masking two large retaining walls that occupy a significant portion of his Rear Yard. He has sized the pergola such that it will overlap with and cover the retaining walls, which are essentially continuations of the edges of his house. No other home in the neighbourhood has to accommodate retaining walls. They have significantly hindered his plans for the property.
- [10] The pergola is an open structure with an open roof held up by four posts. It is not attached to the house.
- [11] There is precedent for such a structure in the area. There is a large pergola located on a property down the road from the subject Site, just outside of the 60-metre notification radius.
- [12] The proposed development will enhance the beauty of the neighbourhood. It is not enclosed and will mask the unsightly retaining walls. He would not oppose his neighbours were they to propose a similar development. He has consulted his immediate neighbours on each side of the subject Site, and neither has any objection to the proposed development.

*ii) Position of the Development Officer, Mr. G. Robinson*

- [13] The Development Officer confirmed that the subject Site slopes from front to back due to issues with the foundation of the structure. Retaining walls were required due to the Site's Grading.
- [14] The proposed development was considered as alterations to the existing structure rather than an Accessory structure because the retaining walls and the base for the proposed pergola are attached to the existing structure's foundation.
- [15] The difficulty in analyzing the projection of the proposed development is that, under Section 44(1)(a), there is a series of undefined terms aiming to account for different scenarios. The previous Development Officer assigned to this file determined that the proposed development was similar to a shade projection and, therefore, applied the projection requirements prescribed by Section 44(1)(a) of the *Zoning Bylaw*.

- [16] The stormwater area located behind the subject Site may be seen as a mitigating factor. The proposed development would certainly have more impact on the surrounding area if there was a house located behind the subject Site.
- [17] While this is currently the only lot within the neighbourhood that features retaining walls, if one of the neighbours wanted to construct a similar structure to the proposed development, they may have to also construct retaining walls for Grading purposes.
- [18] In response to a question from the Board regarding whether or not the proposed pergola's design would affect vegetation, the Development Officer stated that a deck may result in some interference. The intent of the regulations in the *Zoning Bylaw* is to have natural growth space on Site. Nevertheless, even if a deck were placed over the entire back yard, placing some planters on top of it would make it compliant.

*iii) Rebuttal of the Appellant*

- [20] In rebuttal, the Appellant stated that, with respect to vegetation, he already has six trees on the property and has plans for additional trees. He is only required to have three. All of the trees currently on Site are at least four-feet tall.
- [21] Also, the concrete base is not attached to the house. It was simply poured on the flat area behind the house, and the pergola is located on top of it.

**Decision**

- [22] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions:
- i)* Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Zoning Bylaw* 12800.
  - ii)* Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.
  - iii)* As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development.
- [23] In granting the development, the following variance to the *Zoning Bylaw* is allowed:
- i)* The Setback Projection requirements of Section 44(1)(a) are varied 2.94 metres from 0.6 metres to 3.54 metres.

**Reasons for Decision**

- [24] The proposed development consists of alterations to a Permitted Use in the RSL Residential Small Lot Zone.
- [25] The Board accepts the submission of the Appellant that there is some hardship specific to this lot due to the concrete retaining walls, which were required to shore up the foundation of the house and assist with the final Grading.
- [26] The Board notes that there were no objections from anyone within the 60-metre notification radius and accepts the submission of the Appellant that he had consulted with his neighbours and that both of his immediate neighbours were amenable to his proposed development.
- [27] The Board finds that the choice of designing a pergola as opposed to any other structure will in fact limit the massing effect due to the openness of the walls and roof in the pergola structure. The pergola will be built over a patio at ground level, accessed from a walk-out basement, which further reduces massing effects.
- [28] The Board further accepts that the Height of the pergola will mask unsightly concrete retaining walls, as the Appellant has purchased some 20 shrubs and 6 trees that are of greater caliber than the minimum prescribed by the *Zoning Bylaw*.
- [29] The Board finds 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.



**Winston Tuttle, Presiding Officer**  
Subdivision and Development Appeal Board

**Board Members in Attendance:**

Mr. M. Young, Ms. E. Solez, Mr. A. Bolstad, Mr. K Hample

### **Advisements**

1. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
2. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.
3. Any future deck enclosure or cover requires a separate development and building permit approval.
4. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
5. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.

### **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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*



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Date: August 11, 2016  
Project Number: 223771228-001  
File Number: SDAB-D-16-175

**Notice of Decision**

- [1] On July 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 30, 2016. The appeal concerned the decision of the Development Authority, issued on June 27, 2016, to refuse the following development:

**Operate a Major Home Based Business (Hair Salon - BEBE HAIR STUDIO)**

- [2] The subject property is on Plan 0424308 Blk 164 Lot 61, located at 1604 - Hodgson Court NW, within the RSL Residential Small Lot Zone. The Hodgson Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- The Refused Development Permit with attachments;
  - Canada Post delivery confirmation;
  - The Development Officer's written submissions;
  - Four Online responses in opposition to the proposed development; and
  - The Hodgson Neighbourhood Area Structure Plan.

**Preliminary Matter**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

**Summary of Hearing***i) Position of the Appellant, Ms. N. Banahi*

- [7] The Appellant reiterated the Grounds for Appeal contained in the Notice of Appeal.
- [8] She converted her Garage into a hair salon in 2015, but she did not know that she had to apply for a Development Permit at the time. She now knows that she needs a permit, which is why she made this application.
- [9] The application form she filled out gave her the several options in terms of where the business would be located. As the Garage was listed as an option, she thought that she would be allowed to run the hair salon out of her Garage. However, by putting it in her Garage, she lost a parking space and, consequently, her business was refused by the Development Authority. As a result, she moved out of the Garage to work in the house, using the den as a waiting room. A City inspector subsequently visited the house and advised her that this was not permitted either.
- [10] With respect to objections that have been voiced by her neighbours, she does not know why they are opposed to her business. She has had conflict with one of the neighbours, which could explain his opposition, but the rest of the neighbours opposing live relatively far from her property. She supposes that they are not comfortable having a Home Based Business in their neighbourhood, but she is not the only Home Based Business operating in Edmonton. The neighbours she has spoken to are fine with her business and have even indicated that her clients can park in front of their homes.
- [11] She is applying for a Home Based Business out of necessity. She used to have a salon on another Site, but she was forced to sell it. It was too difficult maintaining a business outside of the home while caring for her two children.
- [12] With respect to the number of clients visiting the subject Site, she stated that it fluctuates. Some days she has one or two clients visit. Other days she has six or seven. Her hours of operation usually run from 10 o'clock in the morning to six o'clock in the evening, but sometimes she extends her hours to accommodate clients. All of her clients are either clients she had at her previous salon or new clients that heard of her business via word of mouth. She does not advertise, and there are no Signs on the subject Site.
- [13] The space in her Garage that the Development Authority identified as a waiting room is actually more of a play room or study. She would prefer to work in the Garage, as she has someone living in her basement that she does not want to inconvenience by operating the Home Based Business in the house, but she moved the business into the house in hopes of avoiding a refusal from the Development Authority.



[14] The basement is not a suite. There are two bedrooms down there and a bar, but there is no refrigerator. She has not applied for a Basement Suite, as it is just her mother that stays there.

ii) *Position of the Development Officer, Mr. B. Liang*

[15] The Development Officer stated that a hair stylist, or any other personal service type of business, is a common approval for a Major Home Based Business. What distinguishes the proposed development is the fact that there is a room inside the Garage that has converted for use associated with the business. There is evidence that the Garage was used as a hair salon for about a year.

[16] For typical Home Based Businesses, a room inside the home is converted. In this case, the Appellant has similarly converted a room inside the home for the salon. However, the room inside the Garage is still being used as a part of the business.

[17] Because the Garage is being used as a waiting room, it takes away the additional parking space required for the Home Based Business. Homes Based Businesses should only be accommodating one customer at a time. The use of a waiting room runs counter to this principle. The Development Authority discourages waiting rooms to reduce traffic impact on the surrounding neighbourhood.

[18] When the Development Authority reviews a Major Home Based Business, it tries to ensure that the property has sufficient off-street parking. On-street parking is generally reserved for visitors and should not be dedicated to a Major Home Based Business. If the Garage would not have been altered, he likely would have approved the application. The Driveway is wide and long enough to accommodate two parking spaces.

[19] Further, a Major Home Based Business should not have alterations that are visible from the street. In this case, when the Garage is open, neighbours are able to see the modifications made to the Garage from the street. That aside, the interior alterations to the Garage were done without the requisite development or building permits.

[20] The interior alterations to the Garage are what make the proposed development appear to be a Personal Service Shop, as opposed to hairstylist running a Major Home Based Business. The scope of the Appellant's application is for a Major Home Based Business for a hairstylist. It does not include the interior alterations to the Garage. The application is merely for the Major Home Based Business existing within the house itself.

[21] With respect to the basement, the inspection of the Site did not include the basement. However, if a Major Home Based Business is approved for the Site, it would preclude the approval of a Secondary Suite if it is subsequently applied for.

*iii) Rebuttal of the Appellant*

- [22] In rebuttal, the Appellant stated that, although she would prefer to work in the Garage, she will work in the house if necessary and comply with the Development Officer's recommended hours of operation.
- [23] With respect to parking, the subject Site is situated on a corner lot with access to plenty of street parking. Parking is allowed on both sides of both Hodgson Way and Hodgson Court, the street abutting the subject Site.

**Decision**

- [24] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** with the following conditions:
- i) This Development Permit may be revoked or invalidated, at any time, if the Major Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes.
  - ii) The Major Home Based Business shall be operated by a resident of the Dwelling on the property (Section 7.3.7).
  - iii) The Major Home Based Business must be secondary to the residential Use of the building (Section 7.3.7).
  - iv) A minimum of 2 parking spaces on the front Driveway shall be used for the purpose of accommodating the vehicles of clients and residents in connection with the Single Detached House or the Major Home Based Business.
  - v) There shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling (section 75.1).
  - vi) 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 (section 75.2).
  - vii) 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 (section 75.3). All client visits shall be scheduled by appointment only between 9:00 AM to 6:00 PM on Mondays to Fridays, and between 9:00 AM to 5:00 PM on Saturdays and Sundays, and no two appointments shall overlap. No dedicated waiting room for this business shall be created inside the dwelling.

- viii) There shall be no non-resident employees or business partners working on site.
- ix) There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings (Section 75.5).
- x) The Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings (Section 75.6).
- xi) A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling (Section 75.10).
- xii) This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location.

[25] In granting the development, the following variance to the *Zoning Bylaw* is allowed:

- i) The minimum number of parking spaces prescribed by Section 54.2(1)(a) is varied from three parking spaces to two parking spaces.

### **Reasons for Decision**

- [26] The Board finds that, while Personal Service Shop Uses are supposed to be in a commercial zone, a Major Home Based Business is a Discretionary Use in the RF1 zone, and a hair stylist is one of the types of businesses typically approved as a Major Home Based Business, which defeats the Development Officer's analysis related to a Personal Services Shop Use in his initial refusal.
- [27] The Board accepts the submission of the Appellant that there is ample street parking available due to the proposed development being on a corner lot. The Board notes that there are two parking spaces available for clients of the business on the Driveway and has allowed this appeal with a condition prescribing a minimum of two parking spaces be maintained on the Driveway.
- [28] The Board notes that the Appellant made a submission that there is no Signage associated with the Home Based Business on the subject Site, which mitigates any impact the proposed development would have on the residential character of the neighbourhood.
- [29] The Board accepts the submission of the Appellant that she conducts no advertising, which was confirmed by an online search conducted by the City. She accepts only existing clients and word of mouth referrals.

- [30] The Board notes that, in its reasons for the initial refusal, the City mentioned the internal alterations to the Garage being visible when the Garage door is open. The Board finds that the Garage door is rarely open to residents of the neighbourhood and that, in any case, the visibility of the internal alterations to the Garage would not unduly affect the use, enjoyment or value of neighbouring parcels of land.
- [31] The Board notes that there were four online submissions from affected parties. However, none of the opposing parties attended the hearing. Only one submitted a written response, which indicated the safety of the neighbourhood would be put at risk by having “strangers” visit the hair salon. The Board finds the safety of the community will not be put into jeopardy by having customers of the hair salon visit the subject Site.
- [32] The Board finds 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 the neighbouring parcels of land.



**Winston Tuttle, Presiding Officer**  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young, Ms. E. Solez, Mr. A. Bolstad, Mr. K Hample

**Important Information for the Applicant/Appellant**

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  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,

- e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
  4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
  5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
  6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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## **SDAB-D-16-176**

An appeal to install (1) Freestanding Off-premises Sign (Outfront Media), existing without permits located at 9549 – 118 Avenue NW was TABLED to August 25, 2016.