



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: March 29, 2019  
Project Number: 292046627-001  
File Number: SDAB-D-19-036

**Notice of Decision**

- [1] On March 14, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 12, 2019**. The appeal concerned the decision of the Development Authority, issued on February 5, 2019 to refuse the following development:

**To change the Use from a Single Detached House to a Lodging House with 6 Sleeping Units.**

- [2] The subject property is on Plan 2831HW Blk 2 Lot 5, located at 11520 - 78 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan/Belgravia Station Area Redevelopment Plan (“the Plan”) apply to the subject property.

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

- A copy of the Development Permit application with attachments, photographs, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions and photographs;
- A letter of opposition from the McKernan Community League; and
- Numerous on-line responses in opposition.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Photographs of parking along 78 Avenue 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.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### Summary of Hearing

i) *Position of the Development Authority, J. Xie:*

- [8] Mr. Xie provided the following information in response to questions from the Board:
- a) Section 54.2, Schedule 1 of the *Edmonton Zoning Bylaw* (the *Bylaw*) requires a Lodging House to provide one parking space per two sleeping units. Therefore, the proposed Lodging House with six sleeping units requires three parking spaces. Tandem parking spaces are allowed and the proposed development complies with the parking requirements.
  - b) Pursuant to Section 54.4, Schedule 3, any development within the Residential-Related Use Class is required to provide one loading space. It was his assumption that a loading space would be required to accommodate commercial laundering or any other related service for the proposed congregate living.
  - c) Section 76.9 of the *Bylaw* states that “Increases in vehicular traffic generation and parking demand must be to the satisfaction of the Development Officer and/or Transportation Services.” It was his opinion that the increased parking demand and traffic generation from the proposed development is out of scale with the surrounding single detached houses located on this block. This was partly based on numerous responses received from neighbouring property owners who addressed concerns regarding on street parking and traffic generation. He also considered the traffic and parking generation created by this use as opposed to a more typical residential use in this neighbourhood.
  - d) The Plan does not contain any policies that directly address Lodging Houses.
  - e) The proposed development complies with the Threshold requirements for Special Residential Facilities, pursuant to Section 96 of the *Bylaw*. There are no other permitted facilities located on this block and in the surrounding neighbourhood.
  - f) Every application for a Special Residential Facility has to be reviewed on its own merit.

- g) Many of the letters received from neighbouring property owners referenced “illegal” facilities which he did not consider in his review because they did not have legally issued development permits.
- h) He acknowledged that Council has allowed this use in the RF1 Zone; the Threshold has not been exceeded; the parking requirements have been met; and that the only variance required is the provision of one loading space. However, the comments received from neighbours provided a context of the neighbourhood and weighed heavily on his decision to refuse the application.
- i) The parking requirements for a family living in a single detached house are considered differently because there are dependents that are not old enough to own vehicles whereas a Lodging House accommodates single adult residents who could potentially all own their vehicles.
- j) The proposed tandem parking space will not block access to the parking spaces located inside the garage and therefore, complies with the development regulations.

ii) *Position of the Appellant, T. Nguyen:*

- [9] Policy 4.4.14 of the Plan encourages greater housing choice for households of varying sizes and income levels and envisions the introduction of higher densities and additional housing forms to encourage more affordable housing into the plan area.
- [10] Ms. Nguyen acknowledged how difficult it is to regulate student parking in neighbourhoods because they cannot find affordable parking on campus. However, she has limited the number of residents in the Lodging House that own vehicles in order to comply with the parking requirements. Through various interviews with prospective residents, she found that most of them did not own vehicles given the proximity to public transportation and their demographic.
- [11] There are four parking spaces at the rear of the property including the garage spaces and only three parking spaces are required. Two residents have City permits that allow them to park on the street.
- [12] Ms. Nguyen questioned how the proposed development would contribute to increased parking demand and traffic generation if the parking requirements have been met.
- [13] The proposed development will not change the physical appearance of this single detached house. A loading space is not required because commercial services will not be provided. All servicing such as plumbing, heating and electrical will be done by typical residential contractors just like any other single-family home. No one living in the house will require special services such as medical care or security services. There will not be any specialty laundering facilities or a commercial kitchen.

- [14] Ms. Nguyen purchased the house from a family who had two children attending University and rented rooms to other University students.
- [15] After she purchased the property some trees were removed to clean up the yard as well as some interior improvements.
- [16] The management of student housing, specifically noise, has been analyzed and addressed through the preparation of the lease agreements and the types of individuals that will be allowed in the house. A clause was added to ensure that potential residents are aware that undue noise is grounds for termination of the lease.
- [17] Numerous conversations have occurred with the (west) adjacent neighbour to ensure them that if any issues arise from the occupancy of the house they could contact them to address the issue. Since purchasing the house in May 2018, they have not received any noise or grounds keeping complaints and/or been notified of any bylaw infractions.
- [18] Two photographs, marked *Exhibit A*, were submitted to illustrate the parking situation along 78 Avenue on a typical day. One photograph was taken during the day and the other in the evening.
- [19] Ms. Nguyen acknowledged that there are many illegal Lodging Houses operating in this neighbourhood.
- [20] The property could have been subdivided to accommodate the development of two skinny houses to provide student housing but instead the decision was made to retain the existing character of the single detached house while providing much needed student housing that is located close to the LRT.
- [21] The development permit application was refused based on the number of neighbours who are opposed to the operation of a Lodging House. However, it was her opinion that these concerns are related to the number of other illegal Lodging Houses operating in the neighbourhood.
- [22] The Threshold for this type of facility in this neighbourhood has not been exceeded and the proposed development complies with all of the *Bylaw* requirements with the exception of a loading space.
- [23] Ms. Nguyen provided the following information in response to questions from the Board:
- a) On street parking is permitted on both sides of 78 Avenue and it is not a bus route.
  - b) The lease agreements are for a period of one year.
  - c) The subject site was being used as a Lodging House when it was purchased in May 2018. However, she was not aware that a development permit had not been issued. A

development permit application was made as soon as she became aware of the situation.

- d) There is an illegal Lodging House operating from a corner site located south of her property.

*iii) Position of P. Rausch, representing the McKernan Community League in Opposition to the Respondent:*

- [24] The Plan was adopted by Council over 25 years ago, before densification and LRT construction.
- [25] The Community League supports higher density housing on the perimeter of the neighbourhood to ensure the integrity of single family housing in the interior parts of the neighbourhood.
- [26] Lodging Houses have been supported in the past in order to provide much needed housing for the University and the Hospital.
- [27] The Community League is concerned with the growing trend of property owners to operate illegal Lodging Houses and have identified that there are approximately 20 illegal houses currently operating in this neighbourhood.
- [28] Many of these houses do not comply with building and fire codes for basement occupancy.
- [29] The Appellant should have been aware that the house was not operating as a legal Lodging House when it was purchased.
- [30] Mr. Rausch questioned when the photographs submitted by the Appellant were taken because he has personally witnessed bumper to bumper parking along 78 Avenue.
- [31] Mr. Rausch provided the following information in response to questions from the Board:
  - a) He acknowledged that building and fire code regulations are outside the purview of the Board.
  - b) The aerial photograph contained in the Development Officer's report was referenced and it was acknowledged that some of the parking congestion could be attributed to people who park in the neighbourhood and take the LRT downtown.
  - c) The photographs submitted by the Appellant may have been taken after residents left the neighbourhood to go to work.

- d) He could not confirm how many houses located along 78 Avenue are used as rental properties.
- e) All residents who park on the street require residential parking permits.
- f) It was acknowledged that the Threshold for Special Residential Facilities has not been met. He estimated that the proposed development would be the third or fourth legal Lodging House in this neighbourhood.

*iv) Rebuttal of the Appellant:*

[32] Ms. Nguyen clarified that the Affordable Housing excerpt referenced from Plan was dated August 2014, after the construction of the LRT.

## **Decision**

[33] 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**:

1. This Development Permit authorizes development to change the use from a Single Detached House to a Lodging House with six Sleeping Units. The development shall be constructed in accordance with the stamped and approved drawings;
2. The required parking spaces shall be wholly provided on the same Site as the building. (Reference Section 54.2(2)(a) and Schedule 1);
3. No Major Home Based Business, Secondary Suite, Garden Suite or Garage Suite shall be permitted as part of a Lodging House development or on the Site of such development (Reference Section 76.7);
4. For the purpose of applying these regulations the Development Officer shall maintain a register for all approved Special Residential Facilities. The register shall include the address of the facility, maximum occupancy of the facility, and any other necessary information (Reference Section 96.5);
5. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a sanitary Trunk Fund fee of \$1629.00. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton. Please see the following webpage for more information: [https://www.edmonton.ca/city\\_government/utilities/sanitary-sewer-trunk-charge-sstc.aspx](https://www.edmonton.ca/city_government/utilities/sanitary-sewer-trunk-charge-sstc.aspx).

## ADVISEMENT:

- i) Unless otherwise stated, all above references to “section numbers” refer to the authority under the *Edmonton Zoning Bylaw 12800*.

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

1. The requirement to provide one loading space pursuant to Section 54.4, Schedule 3 is waived.

**Reasons for Decision**

[35] The proposed development, a Lodging House, is a Discretionary Use in the (RF1) Single Detached Residential Zone.

[36] The development permit application was refused because of a deficiency of one loading space, pursuant to Section 54.4, Schedule 3 of the *Edmonton Zoning Bylaw* (the *Bylaw*) and because the Development Authority determined that the proposed development would increase vehicular traffic generation and parking demand that would be out of scale with surrounding developments, pursuant to Section 76.9.

[37] The Board finds that the proposed change in Use is reasonably compatible with surrounding developments for the following reasons:

a) Section 96.3(a) and (b)(i) of the *Bylaw* states:

- a. When determining the threshold for the number of Special Residential Facilities per neighbourhood, a maximum of 3 facilities per 1000 persons shall be allowed in any neighbourhood.
- b. When determining the threshold for the number of Special Residential Facilities by Use per block.
  - i. A maximum of 2 Special Residential Facilities shall be allowed on a single block in a residential Zone.

b) Based on evidence provided by the Development Authority, the Appellant, and the Community League representative, the proposed development does not exceed the Threshold requirements for Special Residential Facilities and complies with Section 96.

c) Section 54.2, Schedule 1(A)(7) of the *Bylaw* requires a Lodging House to provide one parking space per two Sleeping Units. The proposed Lodging House with six

Sleeping Units requires three parking spaces. Four parking spaces are proposed, which exceeds the minimum requirement.

- d) Based on evidence provided by the Appellant, a decision has been made to limit the number of residents who own vehicles. Many of the students do not own vehicles and use public transportation which is located in close proximity to the subject Site.
  - e) 78 Avenue is not a bus route and parking is permitted on both sides of the avenue even though residential parking restrictions apply. Two of the residents of the Lodging House have been issued residential parking permits. Based on a review of the photographic evidence provided, on street parking is available along 78 Avenue both during the day and in the evening.
  - f) The subject Site is located in close proximity to the McKernan/Belgravia LRT Station and is therefore covered by special parking regulations that have been established for Transit Oriented Developments and the Residential Parking Reductions program.
  - g) Policy 4.4.14 of the McKernan/Belgravia Station Area Redevelopment Plan encourages greater housing choice for households of varying sizes and income levels and envisions the introduction of higher densities and additional housing forms to encourage more affordable housing into the plan area.
  - h) The physical appearance of the house or lot has not changed and is characteristic of other residential properties located on this block.
  - i) Evidence was not provided in either the written objections submitted by neighbouring property owners or by the Community League representative who attended the hearing, to persuade the Board that the proposed development is not reasonably compatible with surrounding land uses. Based on the evidence provided by the Development Authority, the Appellant, and the Community League representative, the Board finds that many of the concerns are related to similar facilities that may be operating illegally without approved development permits and are therefore, outside the purview of the Board.
- [38] The Board has waived the requirement to provide one loading space based on the evidence of the Appellant that commercial services will not be provided at this location and that all distribution servicing such as plumbing, heating and electrical will be done by residential contractors just like any other single-family home.



[39] The Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and is of the opinion that waiving the requirement to provide one loading space 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.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. B. Gibson, Mr. R. Hobson, Mr. L. Pratt, Mr. J. Wall

**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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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.*