



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-17-002

Application No. 219678789-004

An appeal by Rob Forgrave VS Green Living Homes to construct a Single Detached House with a front veranda, rear uncovered deck (4.12m x 6.71m), Rooftop Terrace (2.13m x 4.19m), rear attached Garage, fireplace, and a Basement development (NOT to be used as an additional Dwelling) was **WITHDRAWN**.



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Date: January 17, 2017
Project Number: 231692613-001
File Number: SDAB-D-17-003

Notice of Decision

- [1] The Subdivision and Development Appeal Board ("the Board") at a hearing on November 23, 2016, made and passed the following motion:
- "That the hearing for Project No. 231692613-001 be scheduled for January 4 or 5, 2017."
- [2] On January 5, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **November 8, 2016**. The appeal concerned the decision of the Development Authority, issued on October 20, 2016, to approve the following development:
- Change the Use of a Restaurant to a Pawn Store, a Secondhand Store and a Professional, Financial and Office Support Service, and to construct interior alterations. (Cash Canada).**
- [3] The subject property is on Plan 4128HW Blk 38 Lot 12, located at 12225 - 118 Avenue NW, within the CB1 Low Intensity Business Zone. The West Ingle Area Redevelopment Plan applies to the subject property.
- [4] The following documents were received prior to the hearing and form part of the record:
- A copy of the West Ingle Area Redevelopment Plan (West Ingle ARP);
 - A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer's written submission;
 - The Respondent's written submission;
 - A letter of support from the property owner of the subject site;
 - The Appellants written submissions; and
 - A letter of opposition.

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 first Appellant, Mr. M. Monaghan, representing Loan Star Jewellery & Loans*

- [8] Mr. Monaghan has owned Loan Star Jewellery & Loans since 2010 and that business has existed at the lot adjacent to the subject Site since 2004.
- [9] He is not upset about Pawn Stores opening up in the area but he is concerned about a Pawn Store opening up on the adjacent property to his.
- [10] In his opinion, the applicants of the proposed development should have discussed their application with the surrounding businesses and residents as it is a Discretionary Use.
- [11] He indicated that there are 7 Secondhand Store businesses in a 5 block radius and 14 Secondhand Store businesses within a 2 kilometre radius.
- [12] He is opposed to the payday loans aspect of the proposed development which in his view, does not serve the neighbourhood.
- [13] With respect to questions from the Board, Mr. Monaghan provided the following:
- a. In his opinion his concerns relate to both planning and economic issues.
 - b. He understands that the Secondhand Stores and Pawn Stores Overlay of the *Edmonton Zoning Bylaw* does not apply to the subject Site, but he hopes in the future it will apply city-wide.
 - c. He agreed with the Board that the payday loans aspect of the proposed development is a Permitted Use in the CB1 Low Intensity Business Zone (CB1 Zone).

- d. Although the West Ingle ARP does not specifically discourage payday loans, Secondhand Stores, and Pawn Stores, in his view, the Discretionary nature of the businesses warranted a more detailed review of the application by the Development Officer.
- [14] Mr. Monaghan reiterated that the applicants of the proposed development should have consulted with the neighbourhood. He indicated that the previous owner of Loan Star Jewellery & Loans consulted with the neighbourhood before he applied for his business.
- ii) *Position of the second Appellant, Ms. M-L Polydore, representing the Inglewood Business Association*
- [15] Ms. Polydore referenced her documentation and summarized the purpose of the Inglewood Business Revitalization Zone (BRZ). She indicated that she was speaking on behalf of the Inglewood Business Association.
- [16] In her opinion, the proposed Uses are detrimental to a community. The addition of the proposed business does not add to the business mix to serve the neighbourhood.
- [17] She referenced articles which analyzed crime statistics from three major American cities in support of her view that the three proposed Uses contribute to an increase in crime.
- [18] She indicated that there are already Pawn Store-type businesses in the immediate area that are within walking distance of each other.
- [19] The goal of their BRZ is to provide a healthy, balanced, and diverse business community.
- [20] She referenced the BRZ Logic Model from her documentation and indicated that perception of safety is connected to the health of a community.
- [21] Their BRZ has heavily invested financially to the neighbourhood to enhance the beautification, walkability, sustainability, and livability of the community.
- [22] She reiterated that their goal is to curb the negative impact that the proposed Uses bring to a neighbourhood.
- [23] With respect to questions from the Board, Ms. Polydore provided the following:
- a. She is not necessarily against the business aspect of the proposed development, but in her view, there are too many businesses that are similar to the proposed development.

- b. She understands that there is currently no provision in the *Edmonton Zoning Bylaw* that prohibits the Uses of the proposed development but she hopes this will change in the future.
 - c. The Board clarified that payday loans aspect of the proposed development is part of Professional, Financial and Office Support Service, a Permitted Use and the applicant has a right to operate that Use in the CB1 Zone.
 - d. She could not provide the Board with evidence that existing Secondhand Stores and Pawn Stores contribute to crime to the immediate neighbourhood and the City of Edmonton.
 - e. She indicated that the 97 signatures opposed to the proposed development were provided from the Prince Charles Community League (Prince Charles CL) website.
 - f. Although none of the signatures provided their address, in her view they most likely live in the surrounding neighbourhood since the petition was posted to the Prince Charles CL's website.
 - g. She confirmed that the six signatures in opposition were obtained by the Inglewood Business Association and they were businesses in the neighbourhood.
 - h. She confirmed that their BRZ did not have any signatures from their members.
- [24] Ms. Polydore indicated that although the Board cannot change the Bylaws she hopes the Board considers the people in the neighbourhood.

iii) Position of an Affected Business owner, Mr. M. Tellier of Tire Craft

- [25] Mr. Tellier indicated that he understands it is reasonable for a property owner to want a new tenant to occupy their space.
- [26] The business community in the immediate and surrounding area is not enthusiastic about another Pawn Store type business in the area.
- [27] He confirmed that there have been no negative impacts from the existing Pawn Store-type businesses in the area.

[28] Although he is disappointed that another Pawn Store type business will occupy the vacant space, if they obtain approval then they will be welcome in their business community.

iv) Position of an Affected Property owner, Mr. C. Norm

[29] Mr. Norm has lived in the Prince Charles neighbourhood for 32 years and he was a past president for the Prince Charles CL.

[30] He first heard of the proposed development through the Edmonton Journal.

[31] He discussed the proposed development with the current President of the Prince Charles CL and other members and they determined that they are not in favour of another Pawn Store business in the neighborhood.

[32] They did not have time to canvass the neighbourhood and provide a petition.

[33] He understands that the proposed development complies with the current Bylaws, but they prefer a more family oriented business like a restaurant.

v) Position of the Development Officer, Mr. Adams

[34] Mr. Adams confirmed that a payday loan business is a Professional, Financial and Office Support Use, which is a Permitted Use in the CB1 Zone.

[35] He confirmed that there is a Secondhand Stores and Pawn Stores Overlay in the *Edmonton Zoning Bylaw* but it does not apply to the subject Site.

[36] He confirmed that there are no special regulations on proliferation and separation distances for the Uses of the proposed development.

[37] He referenced page 69 and 70 of the West Ingle ARP and confirmed that the Uses of the proposed development are not included in the list of discouraged Uses in the West Ingle ARP. He indicated that the list of discouraged Uses seem related to Automobile Uses and parking and noise impacts.

[38] He indicated that the proposed development creates a reduction in parking requirements compared to the previous Restaurant Use.

- [39] He indicated that nuisance issues on page 69 and page 70 of the West Ingle ARP are related to traffic issues.
- [40] With regard to the articles submitted by the Inglewood Business Association on major American cities and crime, he reiterated that payday loans are a Permitted Use and City Council has determined that this Use is allowed to operate on the subject Site.
- [41] He indicated that his decisions are based on planning issues and not moral issues.
- [42] In his opinion, this proposed development did not warrant any special conditions based on potential crime.
- [43] With regard to the BRZ objectives to limit payday loans, he indicated that City Council would have to enshrine those objectives into the *Edmonton Zoning Bylaw* or Statutory Plans for them to be considered.
- [44] He indicated that crime is taken into consideration in the *Edmonton Zoning Bylaw*. Crime Prevention Through Environmental Design (CPTED) criteria is considered for Uses such as Body Rub Centres. A Development Officer can request a CPTED report if there are specific and compelling reasons to do so.
- [45] He is not aware of any City of Edmonton report that links Pawn Stores to crime.
- vi) *Position of the Respondents, Ms. M. Jhamb, Mr. M. Rowsell, and Mr. M. Wicklund representing Cash Canada*
- [46] They referenced their documentation to demonstrate the objectives of Cash Canada.
- [47] Cash Canada is not comparable to a payday loan. Their proposed development is Pawn Store oriented.
- [48] In their view, food and restaurant businesses constantly closing and leaving the subject Site show that it is not a favorable location for this type of business.
- [49] In their view, empty buildings create more crime.
- [50] Their business will be a long term investment for this location.
- [51] Secondhand Store businesses like Value Village are good for neighbourhoods and provide families with affordable options. In their view, their business will be beneficial for the neighbourhood.

- [52] They have not seen any evidence from the Appellants that connect their proposed development to impacting the neighbourhood negatively.
- [53] Some areas around NAIT have up to seven Pawn Stores on the same street and in their view; there have been no negative issues with regard to that high concentration.
- [54] They indicated that the subject Site is surrounded by a Secondhand Store, a Tire Store and a Restaurant.
- [55] They reiterated that there is no evidence presented to show that their proposed development will bring crime into the area and in their opinion there is no saturation point on the number of Pawn Store type businesses in the area. They reiterated that their business will positively contribute to the neighbourhood.

vii) Rebuttal of the first Appellant, Mr. Monaghan

- [56] He reiterated that there are several other Secondhand Stores in the area.
- [57] He does not understand why the applicants would want to move into the subject Site when his existing Pawn Store is immediately adjacent to the proposed development.

viii) Rebuttal of the second Appellant, Ms. Polydore

- [58] She reiterated that there are too many Secondhand Store type businesses in the area.

Decision

- [59] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:
1. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c).

2. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51).

Reasons for Decision

- [60] A portion of the proposed development is a Professional, Financial and Office Support Service, which is a Permitted Use in the CB1 Low Intensity Business Zone. The other part of the proposed development is a Pawn Store and a Secondhand Store, which are both Discretionary Uses in the CB1 Low Intensity Business Zone. No variances to the applicable development regulations are required.
- [61] The Board finds that the proposed development fully complies with the *Edmonton Zoning Bylaw* and the West Ingle ARP.
- [62] The Board acknowledges that a Secondhand Stores and Pawn Stores Overlay exists within the *Edmonton Zoning Bylaw*. However, the Board notes that Overlay is not applicable to the subject Site.
- [63] The proposed development complies with the West Ingle ARP for the following reasons:
- a. The proposed Uses are not applicable to the list of Uses discouraged in the CB1 District.
 - b. The subject Site is zoned for commercial Uses such as the proposed development.
 - c. The Board finds that there is sufficient on-site parking and no traffic nuisance issues related to the proposed Uses.
- [64] The Board finds that the majority of the concerns addressed by the Appellants and the neighbours who attended in opposition centred on business competition, economic, and social issues. It is not within the Board's purview to consider issues that are not planning related.
- [65] The Board notes that the second Appellant and the Business owner who attended in opposition both indicated that the existing Pawn Store / Secondhand Store businesses in the area have not contributed to crime in the area. Based on the totality of evidence, the Board cannot conclude that there is any planning reason to refuse this proposed development.
- [66] The Board heard evidence that there is one other Pawn Store in the immediate area and Pawn Stores and Secondhand Stores in the surrounding neighbourhoods. The Board finds that this is an indicator that this proposed development is reasonably compatible with the neighbourhood generally.

[67] Based on the above, it is the opinion of the Board that the proposed development is reasonably compatible with surrounding uses. Furthermore, it 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.

A handwritten signature in blue ink, appearing to read 'B. Gibson', with a long horizontal flourish extending to the right.

Mr. B. Gibson, 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 NW, 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 NW, 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.