



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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File Number: SDAB-D-17-054

Notice of Decision

- [1] On March 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 10, 2017**. The appeal concerned the decision of the Development Authority, issued on January 24, 2017, to approve the following development:

**To change the use from General Retail Stores to a Personal Service Shop
(Body Rub Centre) (The Gallery)**

- [2] The subject property is on Condo Common Area (Plan 1023435, 1023437, 1621131), located at 6912/6914 - 76 Avenue NW and Plan 1023437 Unit 5, located at 6914 - 76 Avenue NW, within the IB Industrial Business Zone.
- [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;
 - The Appellant’s written submissions and support letters;
 - Written submission from Legal Counsel for the Respondent; and
 - Online responses.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chairman indicated that as a lawyer he has worked on opposite sides of some cases with both Mr. Farmer and Mr. Kandola but that this would not affect his ability to provide a fair and unbiased hearing. No one opposed the composition of the panel.
- [5] The Chairman 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

i) *Position of the Appellant, Mr. R. Froese, on behalf of 1936812 Alberta Ltd.:*

[7] He and his wife own a small company that owns two condominium units, 6920 – 76 Avenue NW and 6932 – 76 Avenue NW in a small complex of nine businesses.

[8] They own Good News Auto, an auto repair shop. It is unique, in that it is a shop which is a social business and as such the profits of the shop are used to subsidize repairs for people who are unable to afford the repairs needed to keep their vehicles running.

[9] They also provide education workshops for children, youth and adults and they want them to feel safe in their neighbourhood.

[10] Section 97 of the *Edmonton Zoning Bylaw* states that a Body Rub Centre cannot be located any closer than 100 metres from a site that provides services to children. A development permit application for a Child Care Service has been submitted for a location within 100 metres of the proposed location.

[11] A Body Rub Centre does not contribute to that type of atmosphere and could have quite a negative connotation on their business.

[12] A Body Rub Centre is not the type of business that they want located in this neighbourhood because it will adversely affect their ability to find tenants if they wish to sell their properties.

[13] The City of Edmonton Design Guide for a Safer City addresses balancing negative land uses. It states that land uses such as liquor stores, adult stores, video arcades and night clubs are inevitable elements of urban life. However, they can be perceived as negative or undesirable uses depending on their locations in the neighbourhood. In order to minimize their impacts on the community, such uses should be balanced with positive measures by carefully selecting their locations in relationship to surrounding users.

[14] There is a liquor store located in the complex and a large casino cross the street, both of which are considered by the City as “negative land uses”. The proposed business will bring another negative land use into the neighbourhood.

[15] One of the business owners who support the appeal employs only women and expressed safety concerns for her employees. This owner recently moved to this location because there was a Body Rub Centre located next door and her employees experienced problems with the clients of the Body Rub Centre. She plans to leave the location if the Body Rub Centre is approved.

- [16] This is not a personal issue but it was his opinion that this type of business is regarded by many as immoral and distasteful and business owners are concerned about the image it brings to the businesses operating in this complex and the people it brings to the neighbourhood.
- [17] Mr. Froese provided the following responses to questions:
- a) He works with the Sherwood Park Alliance Church to provide a weekend training workshop for teenagers every three months.
 - b) He owns two bays in the complex, a Detailing Shop and Good News Auto.
 - c) The training workshops are held at Good News Auto location.
 - d) The regular business hours are 8:00 a.m. to 5:30 p.m.
 - e) He is currently in discussions with the Edmonton Police Services (EPS) to develop some further training programs for youth that will be held during the evening.
 - f) His primary concerns are the impact that the proposed business will have on children and youth coming to his business and other businesses in the complex as well as the negative impact that it will have on property values.

ii) *Position of Affected Property Owners in Support of the Appellant:*

Ms. F. Khair, Owner/Manager of Jay Kay Systems Consulting Inc.:

- [18] Ms. Khair owns an IT consulting business in this complex and image and reputation are paramount to the success of her business.
- [19] A Body Rub Centre in the same business complex will have a detrimental impact on her business.
- [20] Training sessions are held at this location and members of the public attend to view the service offerings. Her customers include School Boards and municipalities with children who attend for lunch and learn sessions once or twice per month.
- [21] Most of her customers would view this type of business as immoral and a poor reflection on her choice of location which will impact her business.
- [22] There is a reason that a Body Rub Centre cannot be located close to residential areas.
- [23] Her normal business hours are 9:00 a.m. to 5:00 p.m. but some of the training sessions do run into the evening.
- [24] Ms. Khair provided the following responses to questions:
- a) The training sessions are not specifically geared for children but children do attend occasionally.
 - b) Customers for the proposed Body Rub Centre create safety concerns for her clients.

- c) It would be her preference to have the proposed Child Care Service open in the complex rather than the proposed Body Rub Centre.
- d) Training courses are run on demand, usually once or twice per month.
- e) All of the units are individually owned. She and the Appellant, Mr. Froese, currently serve on the Condominium Board.
- f) The Condominium Bylaws do not regulate the type of business that can operate from this condominium complex.

Mr. H. Kandola, Legal Counsel for 785413 Alberta Ltd. and SBH Argyll Ltd:

- [25] The subject location is part of an older complex that is set back on the site. A new freestanding building that contains several condominium units has also been built on this site.
- [26] His client owns all of the units in the new building and is therefore affected by the proposed development. The site is located in close proximity to a liquor store and a casino.
- [27] The City of Edmonton Body Rub Task Force Report addressed the impact of this type of Use on vulnerable areas. It was his opinion that urban decay will be affected by the approval of this development permit.
- [28] It is his client's intent to lease space to provide professional uses such as a bank and child care facility. A development permit application for a Child Care Service has been submitted but they only became aware of the proposed Body Rub Centre after notice of the approval was issued.
- [29] He referenced a section of the Condominium Bylaws contained in the written submissions that dealt with the manner in which the units could be used.
- [30] The Chairman advised that this issue is outside the purview of the Board. The Board is required to deal with proposed developments on the basis of municipal planning. Condominium Bylaws and caveats are private matters that cannot be dealt with by the Board.
- [31] Mr. Kandola acknowledged the limitations of the Board in this matter.
- [32] This is a vulnerable neighbourhood that has been flagged as at risk because of the close proximity of a liquor store and the casino.
- [33] The business owners have expended great effort and expense to develop a professional and positive complex that contributes to the betterment of the community.
- [34] The proposed child care service is now in jeopardy and the proposed development will have significant impact on the value of neighbouring properties.

- [35] This is not a reflection on the business or the Applicant but rather whether or not the proposed business will lead to further urban decay.
- [36] City Council has determined that a Body Rub Centre cannot be located within 100 metres of any use associated with children.
- [37] The appeal should be allowed to ensure the health and safety of children and avoid any negative impacts on neighbouring business owners and to prevent further urban decay.
- [38] Mr. Kandola provided the following responses to questions:
- a) It was his opinion that the CPTED Report provided by the Applicant does not consider the full impact of the proposed development on vulnerable youth because information from affected unit owners was not provided and considered in the review.
 - b) He acknowledged that a development permit for the proposed Child Care Service has not yet been approved and therefore the specific requirements of Section 97 of the *Edmonton Zoning Bylaw* do not apply. However, it was his opinion that it is the spirit of this Section to provide separation between the provision of services to children and a Body Rub Centre.
 - c) He also acknowledged that the Appellant does not have an approved development permit for the services that he is providing to young people.
 - d) There are fourteen units in the new building. The proposed child care service will occupy three or four units and the bank will occupy two units. The rest of the units are currently empty.
 - e) The proposed development prejudices his client who will have difficulty selling or leasing the space to prospective tenants once they know that a Body Rub Centre is located in the same complex.
 - f) The proposed development will contribute to urban decay because congregation of certain businesses will lead to increased crime rates and a decrease in property value which impacts the vibrancy of the area and the urban centre.
 - g) A copy of the Body Rub Task Force Report was not contained in his written submission.

Ms. T. Regaei & Mr. Aggrawal, Real Estate Agents:

- [39] They are the Real Estate agents for the owner of the proposed Child Care Services that will be located in the new freestanding building on the site.
- [40] Approval of the proposed Body Rub Centre will impact the existing business owners and prospective tenants for the new building. Business owners may choose to relocate their business if the proposed development is approved.
- [41] Body Rub Centres are not allowed in shopping centres or residential areas for a reason. Ms. Regaei questioned why a Body Rub Centre has been approved in this strip mall.

- [42] The proposed development will negatively impact the value of both commercial and residential properties in this area.
- [43] Attempts are being made to revitalize this neighbourhood which is located in close proximity to a liquor store and a casino.
- [44] They provided the following responses to questions:
- a) They could not provide any concrete evidence regarding their contention that the proposed development will decrease property values.
 - b) It has been their experience that purchasers will not pay top dollar for a property that is located close to a Body Rub Centre. They are not acting as Real Estate agents for the condominium unit that is currently for sale.
 - c) The proposed development will impact the ability of the developer to sell or lease space in the new building.
 - d) The owner of the proposed Child Care Services is aware of the proposed development and could potentially pull out of their lease. None of the other prospective tenants are aware of the proposed development.
 - e) Both of the buildings share parking.

iii) Position of the Development Officer, Mr. I. Welch:

- [45] The development permit application for a Child Care Service was received after the proposed Body Rub Centre was approved.
- [46] After Mr. Welch realized what had happened, he called the Applicant for the proposed Child Care Service with the option to withdraw the development permit application. The Applicant advised him that she wanted to proceed. Therefore, the application has been placed on hold until the outcome of this appeal is known.
- [47] Mr. Welch provided the following responses to questions:
- a) The proposed development complies with all of the development regulations and does not require any variances.
 - b) The only issue was the Discretionary Use and whether or not it was compatible with surrounding land uses.
 - c) The provision of a CPTED Report is a standard requirement, pursuant to Section 97 of the *Edmonton Zoning Bylaw*.
 - d) The Applicant submitted a report prepared by a qualified professional.
 - e) The report was forwarded to EPS for their feedback. However, after not receiving any feedback for over a month, the review was accepted as meeting the requirements of the *Edmonton Zoning Bylaw*.
 - f) The IB Zone is a non-residential zone that allows both industrial and commercial uses.

- g) The zone contains numerous commercial uses that are Discretionary. A Body Rub Centre is a Discretionary Use and the development permit application was reviewed on that basis.
 - h) Based on the evidence provided by the Appellant regarding training being provided to youth, it was his opinion that the use should be considered as a Commercial School and not a public or private educational establishment which is a traditional school building.
 - i) City Council has not recently amended any Statutory Plans for this neighbourhood.
 - j) Sections of the *Edmonton Zoning Bylaw* that deal with Liquor Stores and Body Rub Centres have recently been amended and those regulations were used in this development permit review.
 - k) His opinion regarding the compatibility of the proposed use and the existing uses in this complex has not changed based on the information that was provided at the hearing.
 - l) A CPTED Report does not consider specific uses but rather looks at the Use Class, the built environment, the potential impacts and how to mitigate those impacts.
 - m) “Negative Land Use” is not a defined terms in the *Edmonton Zoning Bylaw*.
- iv) *Position of the Respondent, Mr. R. Farmer, Legal Counsel for 1214777 Alberta Ltd./50th Street Massage:*

- [48] Section 400.1 of the *Edmonton Zoning Bylaw* states that the General Purpose of the IB Industrial Business Zone is to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses. This Zone should normally be located on the periphery of industrial areas and adjacent to arterial or major collector roadways.
- [49] This is a compatible non-industrial business because no nuisance is created or apparent outside an enclosed building.
- [50] Many of the reasons for appeal and comments from neighbouring business owners are related to speculation regarding what will happen inside the building. The proposed development will not create a nuisance and will not be apparent from outside the enclosed building.
- [51] The Respondent has submitted numerous letters from businesses that are located in close proximity to other Body Rub Centres that are currently operating in the city. These include automotive businesses, and property management companies, all very similar to the businesses that are located in this strip mall. The owners of these businesses all indicate that they have never had any issues with the customers or staff of the Body Rub Centres. They report that they are great neighbours and that it is nice to have the business operating outside of their business hours because it deters crime and vandalism.

- [52] Letters from the owners of two Body Rub Centres currently operating in the city were provided to demonstrate that there have not been any negative impacts on neighbouring business owners. The owners are at the hearing and would like to provide evidence if that is acceptable to the Board.
- [53] Mr. Farmer acknowledged that they would not be considered affected parties pursuant to the *Municipal Government Act* but they would like to provide evidence regarding the compatibility of their businesses with neighbouring properties and businesses.
- [54] The Applicant is the owner of the unit in which the proposed business will be located and therefore has a vested interest in maintaining the value of her unit.
- [55] The approved development permit contains conditions regarding how the front of the building should be finished to make it discrete and unobtrusive. Separate application will have to be made for a sign and it could also be conditioned to be unobtrusive and discrete.
- [56] He commended the Appellant for helping youth and providing training in auto mechanics. However, this cannot be considered as a public education centre that would prohibit the location of a Body Rub Centre within 100 metres.
- [57] The development permit application for a Child Care Service was received after the proposed Body Rub Centre was approved.
- [58] The contention of the Real Estate agents that property values would be negatively impacted is based on speculation as no concrete evidence was provided to support their opinion.
- [59] The proposed Body Rub Centre complies with the General Purpose of the IB Zone and is not incompatible with the neighbouring uses.

The Chairman asked the Appellant and Mr. Kandola if they objected to evidence being provided by the owners of two Body Rub Centres currently operating in the city regarding the compatibility of this type of development in an industrial area. There was no objection raised from any of the parties in attendance.

v) *Position of Affected Property Owners in Support of the Respondent:*

Ms. Rogers:

- [60] She operates one Body Rub Centre on Stony Plain Road and the other in north Edmonton. Both are located in strip malls. There is a Greek kitchen, an Appliance Store and a United Way office located next to her West end Centre which she has operated for 11 years.

- [61] She initially worked with the neighbours to resolve some parking issues and the Stony Plain Business Association to address some concerns regarding the signage.
- [62] Everything happens inside the building, none of her staff hang around outside the building.
- [63] All of her clientele are normal individuals, including business professionals and lawyers.
- [64] Private rooms are used and there is no noise or loud music. Her clientele want to be discrete and will sometimes park their vehicles a few blocks away and walk to the Centre.
- [65] The Centre that she operates in north Edmonton has been operating for 4 years in a strip mall close to a convenience store, a liquor store and a McDonalds Restaurant.
- [66] She has never had any issues with any of the neighbouring businesses.
- [67] Her staff are very discrete. Alcohol and drugs are not allowed on site in order to provide a safe environment for her staff and clients. Assistance is offered to any staff member who experiences addiction problems with either drugs or alcohol. Staff are referred to CEASE if they are interested in leaving this line of work or are experiencing problems in the workplace.
- [68] EPS Officers respond immediately to any problems that they encounter with clients.
- [69] Ms. Rogers provided the following responses to questions:
- a) The Centre in the north end of Edmonton is located in a busy strip mall located at 82 Street and 127 Avenue.
 - b) The hours of operation are 7:00 a.m. to 10:30 p.m.
 - c) One staff member has to be available at all times to answer the door.
 - d) She is not aware of any educational services being provided close to her centres.

Ms. Valiquette:

- [70] She has operated a Body Rub Centre for the past four years in a strip mall close to a CIBC bank, a Comic Book Store, Jiffy Lube, Crystal Glass and a Tatoo Parlor.
- [71] All of the businesses share a parking lot and she has never experienced any problems with any of her neighbours.
- [72] Ms. Valiquette provided the following responses to questions:
- a) None of her clients have ever bothered any of the employees of nearby businesses.
 - b) The Centre shares the rear lane with a Child Care Service that is located approximately 100 metres away.

- c) She is not aware of any educational services being offered to children close to this location. However, children are always frequenting the Comic Book Store.

In closing, Mr. Farmer reiterated that the Board has to make a decision based on development permits that have been issued for neighbouring uses. Ancillary uses occurring on neighbouring properties cannot be considered.

vi) Rebuttal of the Appellant

- [73] He was not advised by the Sustainable Development that a development permit application to operate a Body Rub Centre in this complex had been received. Therefore, he was not able to provide any information regarding the educational services that are offered to youth from his business.
- [74] Mr. Froese confirmed that he has a development permit to operate a mechanic shop from his site.
- [75] He and his wife work with CEASE and the Salvation Army to help women deal with problems resulting from sexual exploitation and human trafficking as a result of working in this type of business.
- [76] Mr. Froese expressed disappointment that neighbouring property owners were not consulted prior to the approval of this development permit application.

Decision

- [77] 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. Exterior lighting shall be developed to provide a safe lit environment in accordance with Section 51 and 58 and to the satisfaction of the Development Officer;
 2. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the *Edmonton Zoning Bylaw* 12800);
 3. All glazed surfaces within the façade shall be transparent, non-reflective and maintain unobstructed visibility into and out of the Public Space of the business.

Reasons for Decision

- [78] The proposed development is a Personal Service Shop (Body Rub Centre).
- [79] Section 6.1(14) of the *Edmonton Zoning Bylaw* defines a Body Rub Centre as a Personal Service Shop development where services are provided that involve the physical external manipulation of the soft tissues of the human body that are performed, offered or solicited for a fee in a manner that appeals to or is designed to appeal to erotic or sexual

appetites or inclinations. This includes but is not limited to a body rub advertised by any means as “sensual”, “sexy” or by any other word or any depiction having like meaning or implication.

- [80] Pursuant to Section 400.3(23) of the *Edmonton Zoning Bylaw* a Personal Service Shop is a Discretionary Use in the IB Industrial Business Zone.
- [81] Based on evidence provided by the Development Authority and supported by the Appellant and all of the other parties who appeared to support the appeal, the proposed development complies with all of the development regulations for a Body Rub Centre, pursuant to Section 97 of the *Edmonton Zoning Bylaw*.
- [82] The Board supports the decision of the Development Authority that the proposed Body Rub Centre, a Discretionary Use in the IB Industrial Business Zone, is not incompatible with existing neighbouring uses. The Board makes this finding for the following reasons:
- a) The proposed Use will have a very minor impact on the existing surrounding uses as there will be a limited number of customer visits and no heavy equipment or machinery will be used.
 - b) Evidence was provided by the operators of two existing Body Rub Centres that their customers are seeking privacy and are very discrete. To this end, customers often park their vehicles some distance away and walk to the building.
 - c) The proposed development complies with all of the parking requirements and the Board did not hear any concerns from the Appellant or neighbouring business owners that parking was a concern.
 - d) One of the major concerns of the Appellant and the other parties who appeared to support the appeal was the potential for negative impact that the proposed development might have on the property values of the neighbouring commercial condominium units and how difficult it would be for the developer to sell the remaining condominium units in the new building on site. However, the Real Estate agents who appeared at the hearing were not able to provide written support from an appraiser or a licenced professional to convince the Board that there would be a significant and material impact on the property values of neighbouring parcels of land. They addressed the potential loss of a planned Child Care Service Use at this location. However, the Board notes that a Development Permit has not yet been issued by the Sustainable Development Department.
 - e) The Board notes that the proposed development complies with all of the development requirements pursuant to Section 97 of the *Edmonton Zoning Bylaw*. Therefore the Board must determine if the proposed Discretionary Use is reasonably compatible with the existing neighbouring uses.
 - f) The Board was not provided with sufficient evidence to conclude that the proposed development was incompatible with the existing neighbouring uses.
 - g) The Board agrees with the evidence provided by Legal Counsel for the Respondent that the objections raised by the Appellant concern the nature of the activities that will occur inside the proposed development, activities that will not be apparent from the exterior of the building.

- h) Section 400.1 of the *Edmonton Zoning Bylaw* states that the General Purpose of the IB Zone is to provide for industrial businesses such that “no nuisance is created or apparent outside an enclosed building”.
 - i) Based on the evidence provided, all of the activities related to the proposed development will occur inside an enclosed building and therefore will not create a nuisance that will be apparent from outside the building on site.
 - j) Accordingly, the Board finds that the proposed development complies with Section 400.1 of the *Edmonton Zoning Bylaw*, the General Purpose of the IB Industrial Business Zone.
- [83] For all of the above reasons, the Board denies the appeal and finds that the proposed development is reasonably compatible with surrounding land uses.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. B. Gibson, Mr. K. Hample, Ms. E. Solez, Ms. K. Thind

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, 10111 – 104 Avenue NW, Edmonton. Signs require separate Development Applications. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
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, 10111 – 104 Avenue 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.