



**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

Date: May 25, 2018
Project Number: 271636552-001
File Number: SDAB-D-18-073

Notice of Decision

[1] On May 17, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 24, 2018**. The appeal concerned the decision of the Development Authority, issued on April 3, 2018, to approve the following development:

Change the Use from General Retail Store to a Private Club and Professional, Financial and Office Support Services (Twisted Village Social Club Inc. & Kevin Cole Consulting Inc.)

[2] The subject property is on Condo Common Area (Plan 0024423, 9723193, 9723192, 0225531), located at 16404C - 100 Avenue NW, within the Site Specific Development Control Provision (DC2.335). The Jasper Place Area Redevelopment Plan applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- The Respondent’s written submissions; and
- Online responses and one e-mail.

Preliminary Matters

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

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

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

[7] The Chair outlined that the Board's authority in a Direct Control Zone is limited by section 685(4) of the *Municipal Government Act*:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Summary of Hearing

i) *Position of the Appellant, 1317682 Alberta Ltd.*

[8] Mr. Kadosh, Student at Law, appeared to represent 1317682 Alberta Ltd., which is a law office.

[9] They are opposed to the proposed development for two reasons:

- a) There is already insufficient parking available in this complex.
- b) The proposed character of the businesses, especially the proposed Twisted Village Social Club Inc., is not in character with other businesses located in the complex.

[10] Parking

- a) There are frequent conflicts regarding existing parking; he referred the Board to the two letters from Group Three Property Management Inc. to support these parking concerns. Each business in this complex has only three parking spaces assigned to it.
- b) While there are some first come first serve stalls available, these fill up quite quickly. He referred to photos submitted today which show how full the parking lot can get in the morning.
- c) Several of the photos submitted by the Respondent depict the parking lots of other nearby buildings, not the parking in front of the bay they intend to occupy. Mr. Kadosh also noted that the Respondents' photos are also all taken after 5:00 p.m.

[11] Character of Proposed Business

- a) The complex supports many professional businesses (law offices, insurance brokerage, real estate brokerage, chiropractic clinic, etc.) and family friendly

businesses (family eateries, etc.). A social club is not in keeping with the character of the complex and will have a negative effect both on the perceived character of the business and the complex as a whole.

- [12] While board games, movie nights and craft workshops may fall under the definition of a Private Club, the Appellant is also proposing business activities. They themselves compared their development to such businesses as massage parlours, exotic dance clubs, swinger clubs and bath houses. Perhaps this application has not been made under the correct use.
- [13] Mr. Kadosh clarified that his initial grounds for appeal incorrectly referenced Section 24.2 of the *Edmonton Zoning Bylaw* and provided a handout providing more relevant sections. Section 14 of the *Edmonton Zoning Bylaw* outlines the Development Officer's duties and in his view the Development Officer should have required the Applicant to "submit a parking impact assessment, parking utilization count or similar information necessary to determine the land use impact of vehicle parking for the full range of Uses contemplated in the Development Permit Application" as per Section 14.11.
- [14] He also referenced Section 11.1(1)(d) which directs that the Development Officer "shall review each Development Permit Application to ascertain its appropriate Use, and may require the applicant to apply for a different Use".
- [15] Mr. Kadosh provided the following responses to questions from the Board:
- a) He confirmed that there are three parking stalls specifically assigned to each business. He is not sure if this restriction applies 24 hours per day.
 - b) His law firm generally operates from 8:30 a.m. to 5:00 p.m. but there are occasions when employees work later or meet with clients after hours. In his view, 30 extra cars parked in the evening could be an imposition.
 - c) Mr. Kadosh notes that the Respondents have indicated they plan to hold dance parties, which Mr. Kadosh believes could lead to concerns regarding alcohol, potential rowdiness and security concerns.
 - d) He believes that all of the bays in the complex for businesses are currently occupied.
 - e) The definition of "Private Club" was displayed:

Under Section 10.7(7) of the *Land Use Bylaw*, **Private Clubs** means development used for the meeting, social or recreational activities of members of a non-profit philanthropic, social service, athletic, business or fraternal organization, without on-site residences. Private Clubs may include rooms for eating, drinking and assembly.

He feels that the name “Twisted” infers some type of non-standard activity which would not fall under the definition of Private Clubs. The proposed development is not compatible with the surrounding professional and family oriented businesses.

ii) Position of the Development Officer, Ms. R. Lee

[16] The Development Authority did not appear at the hearing and the Board relied on Ms. Lee’s written submission.

iii) Position of the Respondent, T, M. Landry and K. Cole.

[17] They propose to run a Private Club which is a permitted use in this zone. It will be run as a social club and community centre for non-conventional communities, such as the LGBTQ community, polyamorous community, and circus, arts and festival people. They also organize fundraisers to assist such groups as rescue shelters.

[18] Ms. Landry submits that events during the week will be low key such as movie nights, board game nights, and craft workshops while larger events such as dance parties would take place on Friday and Saturday evenings. A small fee will be charged for all events. One of the directly adjacent bays is currently vacant and the other closes at 5:00 p.m. and is closed weekends; therefore, noise from dance parties will not be a concern to the neighbouring businesses.

[19] Advertising will target very specific communities, not the general public. While they do have a Facebook page, customers are screened and vetted before they are accepted as members. An intercom and door buzzer system will be installed to restrict entry to members and their guests. Members will be required to comply with their rules and code of conduct.

[20] One of the membership requirements is that everyone must be 18 years plus of age as they intend to provide educational books and art displays that could contain mature subject matter.

[21] Members will be able to rent their facility. While they themselves do not serve alcohol, some of their renters could choose do so and would be responsible to meet any associated requirements such as a liquor license.

[22] Mr. K. Cole advised that he will run his computer consulting business out of the space during regular business hours. He is currently the sole operator and eventually intends on hiring two employees. It is an out-call business and no clients ever visit the office; therefore, the three allotted parking stalls are sufficient. He notes that it does not state anywhere that the allotted parking stalls are assigned for 24 hour parking.

[23] Ms. Landry notes that the Private Club will only be open evenings and weekends when the majority of the existing businesses are closed. The photos that they submitted were all taken in the early evening to illustrate there is ample parking at the time when the Private

Club will operate. Photos from the three buildings right next to them were included as these buildings are somewhat considered part of the business complex. Parking at these other buildings is also used by the clients of the family restaurants. The parking letters submitted by the Appellant are from 2016 and 2017 and are outdated, meaning that the concerns outlined may no longer exist today.

- [24] The majority of their demographic uses transit which is located in close proximity.
- [25] The Appellants do not believe Section 14 of the *Edmonton Zoning Bylaw* is triggered at all. Even if it was triggered, a parking utilization count was done at the application stage.
- [26] Mr. Cole wanted to make clear that they will not be running any kind of body rub or massage parlour. He submits that they were using the comparisons in their written submission to illustrate they have a right to pursue business opportunities just as these more controversial business have a right to operate.
- [27] The two people who signed the Appellant's petition are from the same business. Only one business out of 36 in total signed the petition. No other businesses submitted any objections to the proposed development including the family friendly restaurants.
- [28] Due to the nature of the Private Club, the Applicants noted that it is their intention to keep a low profile and the only signage currently planned is for the computer consulting business.
- [29] They provided the following responses to questions from the Board:
- a) The occupancy level of the Private Club will be about 50. They intend on being good neighbours and the Club will be structured in such a way as to not have any negative impact on nearby businesses. In fact, they will have a positive impact as more business will be generated for the restaurants.
 - b) They confirmed they are not registered as a non-profit society; they are a business corporation. The City of Edmonton advised them they could be considered a Private Club if they were incorporated.
 - c) They will be charging nominal membership fees (\$20.00) a year and will be charging a small amount per event (\$5.00). Their intent is not to make a bunch of money; it is to fill their mandate of serving their target customers.

iv) Rebuttal of the Appellant

- [30] Mr. Kadosh reiterates that he is concerned that the combination of possible alcohol and books of a sexual subject matter and dance parties could turn into rowdiness.
- [31] In Mr. Kadosh's view, some of the proposed activities may not fall under the definition of a Private Club:

- a) Members can bring guests who would have to pay a fee.
 - b) There is a very wide range of usage possibilities from books of a sexual nature, rowdy behaviour arising at the premises to catering to non-conventional groups such as the circus community.
 - c) They stated they are still working out specifics of their business operations; this should be done before a permit is applied for. If their business model is not fully worked out, he does not see how they can give the totality of subjects that will be dealt with at their business.
 - d) While members will be vetted he feels that this could just be a rubber stamp exercise.
- [32] He acknowledged that only one neighbouring business signed his petition but as an articling student he did not have time to canvass the others.
- [33] The computer business operating during the day has a potential to interfere with parking. Three parking stalls are required for employees and there is a potential for customers to visit who would require additional parking.

Decision

- [34] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

Reasons for Decision

- [35] The proposed development is located within a Direct Control site passed by Bylaw 10580 as amended. This appeal is therefore governed by the terms of Section 685(4) of the *Municipal Government Act*, which states:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[36] As a result, this appeal is limited to determine whether or not the Development Authority followed the directions of City Council. It is the finding of the Board that the Development Authority did not follow the directions of City Council by classifying this Use as a Private Club when, in fact, it is a Community Recreation Services Use.

[37] The applicants made an application for a Private Club. The definition for Private Club in both the *Land Use Bylaw* and the *Edmonton Zoning Bylaw* is identical:

Private Clubs means development used for the meeting, social or recreational activities of members of a *non-profit* philanthropic, social service, athletic, business or fraternal organization, without on-site residences. Private Clubs may include rooms for eating, drinking and assembly. (emphasis added)

[38] The question before the Board was whether or not the proposed Use is a Use for a Private Club. The Board agrees that the Use will involve meetings, social and recreational activities. However, the issue is whether or not these activities are restricted to members of a *non-profit* philanthropic, social service, athletic, business or fraternal organization.

[39] The evidence before the Board was that the Twisted Village Private Social Club would restrict provision of its services to clientele who they had approved and to whom they had issued a “membership card”. However, simply having pre-approved customers and offering for-profit services to only pre-approved customers who have become “members” does not make this development a non-profit organization. It is not uncommon for for-profit businesses to restrict their customer base to those who have purchased membership cards. The applicants admitted to the Board that Twisted Village Social Club Inc. is a for-profit Alberta business corporation, and that profit is one of its goals. As such, this is not a Private Club and the Development Authority erred in approving a permit for this use as a Private Club.

[40] The Board finds that what is actually being applied for is the Use known as Community Recreation Services. This is a Use class that was present in the *Land Use Bylaw* and is also currently present in the *Edmonton Zoning Bylaw*; the definitions of which are identical:

Community Recreation Services means development used for recreational, social, arts, or multi-purpose Use in a building without fixed seats and an occupancy capacity of fewer than 500 persons, primarily intended for local community purposes. Typical Uses include community halls, community centres, and community league buildings operated by a local residents’ organization.

[41] The description of the Use provided by the Applicants meets all aspects of this definition. The applicants made it clear it was a multi-purpose development that would involve recreational activities, social activities and arts activities. The submitted plans show large areas entitled “flex” areas none of which have fixed seats. The Applicant confirmed that the occupancy capacity is fewer than 500 persons. The requirement for offering the services to only selected pre-approved members was to ensure that it was for members of

a local community of choice. All of those criteria are the criteria for Community Recreation Services Use.

[42] Community Recreation Services is not a listed Use in the Direct Control Bylaw. The Development Authority therefore allowed a Use in this Direct Control District which is not a Listed Use, and therefore did not follow the directions of Council. Because Community Recreation Services is not a listed Use in the DC Bylaw this development must be refused.

[43] The appeal is allowed and the Development Permit issued is revoked.

Ian Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. E. Solez; Ms. G. Harris; Mr. J. Wall

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.



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-S-18-007

Application No. 273258505-001 LDA18-0067

An appeal to operate a Professional, Financial and Office Support Service Use, and to create two (2) commercial lots, located at 5138 Gateway Boulevard NW, was **POSTPONED** to June 6, 2018.