



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: November 3, 2016  
Project Number: 188393939-001  
File Number: SDAB-D-16-255

**Notice of Decision**

- [1] On October 19, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on September 23, 2016. The appeal concerned the decision of the Development Authority, issued on September 16, 2016, to approve the following development:

Construct an Apartment House (two stories, 5 dwellings)

- [2] The subject property is on Plan I12 Blk C Lot 24, located at 8523 - 106A Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Garneau Area Redevelopment Plan apply 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, approved Development Permit decision, and correspondence from Epcor and various City Departments;
  - Development Officer's written submissions, dated October 14, 2016, with attachments;
  - Appellant's appeal package, including emails, photographs, and information about the appeal;
  - Respondent's appeal package, including a PowerPoint presentation and pictures;
  - Three online responses in opposition to the development, one in support, and one individual who expressed a neutral position but has since corrected it to be a response in opposition.

**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.

### Summary of Hearing

i) *Position of the Appellant, Nashco Enterprises Ltd.*

- [7] The Appellant was represented by Mr. G. Nash. He owns the apartment building located at 8525 – 106A Street NW, immediately adjacent and to the north of the proposed development.

#### Proposed Apartment Does Not Front Onto Roadway

- [8] Mr. Nash noted that although the approved permit states that no overlays apply, it was his understanding that both the Mature Neighbourhood Overlay (“MNO”) and the Medium Scale Residential Infill Overlay (“MSRIO”) apply. Section 823.3(2)(a) of the MSRIO states: “All ground Storey Apartment Dwellings adjacent to a public roadway other than a Lane shall have a private exterior entrance that fronts onto the roadway.” Mr. Nash submitted that the main door of the proposed development is located on the side of the building, and does not front onto the roadway. The approved permit does not mention this point.
- [9] In his view, the Development Officer’s failure to address this point is a violation of Section 687(3) of the *Municipal Government Act*, which requires conformance with the *Edmonton Zoning Bylaw*.

#### Noise

- [10] In his view, the orientation of the proposed development will result in noise being directed upward. He noted that under the Community Standards Bylaw, there is a noise limitation of 60 decibels. Since the Respondent intends to rent out the units to students, the noise generated will likely exceed this limit.
- [11] Upon questioning by the Board, he explained that the south side of his building is where the kitchen windows have been placed, while the bedrooms are located on the east side. The south side of his property also has three birch trees that fulfill landscaping requirements. He anticipates that these trees will grow to approximately 20 feet tall, but will do nothing to prevent excess noise.

### Parking

- [12] Mr. Nash clarified that he owns the apartment building next to the proposed development. To meet City development regulations, he first designed the apartment's parking lot, which has 19 off-street parking spaces, and then developed the rest of the Site around the parking lot. In the last three years, out of 16 tenants he has only had one tenant who did not own a car. He submitted that the Respondent's position with respect to university students not having vehicles is inaccurate.
- [13] Referring to the plans for the subject development, he noted that it would appear that the proposed development is actually for six suites instead of five, as it was his understanding that the Apartment Manager would live in the sixth suite.
- [14] Upon questioning by the Board, he explained that 106A Street is a two-way street, while 85 Avenue is a one-way street. On-street parking is available only on one side of both these streets.

### Side Setback Variance

- [15] His primary concern with respect to this variance is the 2.54 metre distance from the proposed building to the property line shared with his apartment building.

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

- [16] The following property owners within the 60 metre notification area appeared in opposition to the development, and in support of the appeal:
- a) Ms. F. Hurley;
  - b) Mr. D. McAllister;
  - c) Mr. T. Rochemant; and
  - d) Ms. C. Flannigan.
- [17] Their concerns with the proposed development are summarized as follows:
- a) It would appear that the proposed development is for six suites rather than five. Sufficient parking needs to be provided for these suites, as the proposed development is an apartment and not a dormitory. Furthermore, contrary to the Respondent's position, university students do own vehicles that will require parking spaces.
  - b) On-street parking is already limited, with parking available only on one side of the street.
  - c) There is a negative impact from locating the main entrance on the side of the building rather than fronting onto the street. This differs from the pedestrian friendly streetscape the City prefers as per the MSRIO.

- d) The reduced setbacks will result in the subject development butting up right against the adjacent properties, which will have a negative impact upon the neighbours' use and enjoyment of their properties.
- e) One neighbour expressed the view that should the proposed development be granted, it will box in one of the few remaining Single Detached Houses on the street, and set a precedent in the neighbourhood as more Single Detached Homes are replaced with higher density developments.
- f) One neighbour expressed concerns about the accuracy of the Respondent's consultation letter dated July 20, 2016, which stated that the development was for a condominium development. The City's September 19, 2016 letter stated that the development is for an Apartment house.

*iii) Position of the Development Officer, Ms. C. Semeniuk*

- [18] Ms. Semeniuk was accompanied by her colleague and fellow Development Officer, Mr. M. Harrison. Ms. Semeniuk presented verbatim the information as set out in her Written Submissions dated October 14, 2016.
- [19] Upon questioning, she stated that having heard the concerns and submissions of the neighbouring property owners, she would still maintain her position and grant the development.
- [20] With respect to the regulation in the MSRIO requiring street-fronting entrances, she noted that the Overlay's purpose is to encourage pedestrian-friendly designs. Ideally, the entrance would front onto the street. However, she is aware of other instances of apartment housing with side entrances, and it was her view that the proposed side entrance will not impact significantly on adjacent properties.
- [21] She noted that a full sized lot would allow a development of 10 units. The proposed development is on a half-size lot, and the developer is proposing five units, which is exactly half of what is allowed for a full size lot.
- [22] The Board noted that a lot size of a minimum of 800 square metres is generally required for apartment buildings to prevent a cascade of variances. In response, Ms. Semeniuk and Mr. Harrison submitted that in recent years, the Development Authority has received applications for the development of apartment buildings on 400 square metre lots. The requirement that lot sizes be 800 square metres appears to be an outdated notion, but there is still question as to whether 400 square metres is appropriate.

- [23] Mr. Harrison also noted that City Council is encouraging infill developments, which may require variances to lot sizes. He recognized that in granting such variances, the goal is to not exacerbate existing parking problems. At the same time, there is also direction from Council to encourage the use of public transit to mitigate some of these parking problems.
- [24] Should the Board require that six parking spaces be provided, a further cascade of variances will be required, as some of the parking will need to be provided through tandem parking. Variances to permit the elimination of amenity space and the privacy zone between the parking lot and the building would also be required.
- [25] Upon questioning by the Board, Ms. Semeniuk stated that the off-street parking stall located to the rear of the proposed building, and directly abutting the property line with the neighbour to the north, does not pose a concern for her due to the proposed six foot high fence. However, she was unable to say conclusively whether the proposed landscaping would reduce noise.

*iv) Position of the Respondent, FYZ River West Homes*

- [26] The Respondent was represented by Ms. C. Zhang, who was accompanied by Mr. W. Yin.
- [27] In response to concerns about parking, Ms. Zhang drew attention to the September 16, 2016 memorandum from Urban Transportation, which concluded that the proposed development would not have a negative impact on the transportation system. She emphasized that the types of tenants they will be targeting are out-of-town students without cars.
- [28] Referring to her PowerPoint presentation, she noted that three buildings of similar design with side entrance variances have obtained approval from the City. They have not heard any complaints from the neighbourhood regarding noise from those properties. It was the Respondent's view that a low-density building with five units will not create much noise. However, to address the neighbours' concerns, they will build a six feet high fence to block pedestrian noise along the property lines to the north and south. Furthermore, the building has been designed so that noise-generating rooms face the kitchen windows of the adjacent apartment building to the north, rather than facing onto neighbouring bedrooms.
- [29] Upon questioning by the Board, Ms. Zhang clarified that they do not have actual statistics about the target clientele, as the other three comparable buildings were either recently sold or still under construction.

- [30] Ms. Zhang also stressed that the proposed development is for five suites. The basement suite is for the apartment manager who will enforce parking issues. This apartment manager will live on site in his or her own suite, not the basement office. The Manager's Office in the basement allows the apartment manager to separate their work life from their personal life.
- [31] The Respondent also disagreed with opposing neighbours that the subject development will set a precedent, as there are already other apartment buildings in the area.

v) *Position of Affected Property Owner in Support of the Respondent, Mr. D. An*

- [32] Mr. An explained that he was both a friend of the Appellant, as well as a developer who owns property in the notification area. Mr. An talked about his own duplex development. Based on his experience as a developer, his initial reaction to the proposed development was that it was somewhat "aggressive" for the subject lot. However, he recognized that developers in this particular neighbourhood are faced with a number of challenges. Apartment developments, in particular, often require the developer to purchase three lots in a row, while owners of Single Detached Houses raise their prices before selling their lots to the developer.
- [33] He noted that Single Detached Houses are a rarity in this neighbourhood now, and those that remain are usually occupied by tenants who do not care for the property. In contrast, apartments usually have well-maintained lawns.
- [34] With respect to the parking concerns expressed by his neighbours, he observed that the tenants in Single Detached Houses often park behind their detached garages or on the streets. He speculated that this behavior is likely due to the garages no longer being operational or functional.

vi) *Rebuttal of the Appellant*

- [35] Mr. Nash emphasized his concerns about the noise impact from the proposed development, noting that since noise travels in spherical waves in three dimensions, putting up a six foot fence will not abate noise concerns.
- [36] It was his view that based on the Site, there are more appropriate alternative developments, such as a triplex.

**Decision**

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

## Reasons for Decision

- [38] The proposed development is for an Apartment House, which is a Permitted Use in the RA7 Low Rise Apartment Zone. The development is subject to the Medium Scale Residential Infill Overlay (“MSRIO”) and the Garneau Area Redevelopment Plan. Seven variances to the regulations under the *Edmonton Zoning Bylaw* are required.

### Site Area and Site Width

- [39] The Board acknowledges that the required variances to the Site Area and Site Width arise from the site itself, and not the development. However, the requirements as set out in the development regulations have been set at a level to ensure that future developments adhere and comply as much as possible with the *Edmonton Zoning Bylaw*. The Board therefore finds that the deficiency in the Site Area and Site Width have contributed to the other necessary variances that would be required should this development be approved.

### Side Setback and Separation Space in front of the Principal Living Room Window

- [40] The Board heard from the most affected neighbours that the reduced Side Setback as well as the reduction in the Separation Space in front of the Principal Living Room Window would raise noise and privacy concerns.
- [41] Although the Respondent proposed a six foot high fence to mitigate noise concerns, the Board accepts the submissions of the Appellant that since noise travels in spherical waves, the addition of a fence will be unlikely to prevent noise from travelling over the fence. The reduction of the Separation Space to 1.98 metres on the south side of the building will have a direct impact on the enjoyment of the Amenity Space for the owner of the adjacent Single Detached House.

### Parking

- [42] The Board heard from several of the most affected property owners within the 60 metre notification area. The Appellant as well as the individuals in support of the appeal and in opposition to the development indicated that the neighbourhood in this area has existing constrained parking. The Board concludes that the restricted parking on 106A Street which allows parking only on one side of the street further exacerbates the current parking conditions in the neighbourhood.
- [43] The Board also heard that the Respondent intends to target out-of-town university students who do not own cars and will make use of public transit. Although the City’s Urban Transportation department indicated no objections to the parking variance, the Board accepts the submissions of the Appellant and other neighbours that the distance to

the nearest transit stop is 450 metres, which exceeds the existing transit oriented development locational criteria of 400 metres.

- [44] The parking deficiency will therefore contribute to the existing on-street parking stresses, and the Board finds that these impacts are not sufficiently mitigated by the availability of public transit.

#### Amenity Space

- [45] The Board accepts the determination of the Development Officer with respect to this variance, and notes that none of the neighbours in favour of this appeal expressed any opposition to the required Amenity Space variance.

#### Front Access

- [46] Section 823.3(2)(a) of the MSRIO states: “All ground Storey Apartment Dwellings adjacent to a public roadway other than a Lane shall have a private exterior entrance that fronts onto the roadway. Sliding patio doors shall not serve as this entrance.”
- [47] The Board concludes that a side entrance located on the south side of the building does not enhance the streetscape and walkability component of this overlay. By locating the main entrance to the side rather than fronting onto the roadway, the development has contributed directly to the noise and privacy concerns raised by the most affected adjacent neighbours. For this reason, it would not be appropriate to grant the required variance.

#### Community Consultation

- [48] The Board heard a variety of submissions with respect to the quality and accuracy of the community consultation, and makes no conclusion in this regard. Notwithstanding, the Board finds that the Respondent has complied with the requirement to conduct consultation under Section 823.3(6)(b) of the MSRIO.
- [49] The Board notes that five neighbours within the 60 metre notification area appeared at the hearing in opposition to the development. All individuals shared similar concerns related to the impact of the development upon on-street parking stresses, noise and privacy.
- [50] In contrast, one neighbour appeared in support of the development. However, the Board notes that this neighbour was both a friend of the Appellant, and a developer who owns property in the area. This neighbour expressed the view that the proposed development was “aggressive” for the subject Site, which is reflective of the Board’s decision, and that his other reasons for supporting the development relate largely to commercial hurdles faced by developers.



[51] For the above stated reasons, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the appeal is allowed and the development is refused.

Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

W. Tuttle, N. Hack, R. Hobson, S. LaPerle

**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 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: November 3, 2016  
Project Number: 222761485-001  
File Number: SDAB-D-16-256

**Notice of Decision**

- [1] On October 19, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on September 23, 2016. The appeal concerned the decision of the Development Authority, issued on September 2, 2016, to approve the following development:

Change the Use from an Indoor Participant Recreation Service to a Religious Assembly with maximum of 140 seats, and to construct exterior and interior alterations (South West Muslim Community Centre)

- [2] The subject property is on Condo Common Area (Plan 1523167), located at 280C - Saddleback Road NW and Plan 1523167 Unit 1, located at 320 - Saddleback Road NW, within the CNC Neighbourhood Convenience Commercial Zone.

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

- Copy of the Development Permit application and approved plans, approved Development Permit decision, correspondence between the Applicant and the Development Office, and parking study;
- Development Officer's written submissions, dated October 6, 2016, with attachments, including correspondence from Transportation; and
- Appellant's written submissions and Google Maps Screenshots.

**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.

## Summary of Hearing

*i) Position of the Appellant, Humford Management Inc.*

- [7] The Appellant was represented by legal counsel, Ms. J. Agrios, who was accompanied by Mr. J. Rudyk from Humford Management Inc. Ms. Agrios was representing both Humford Management Inc. and the Blue Quill Shopping Centre Phase One owners.
- [8] Referring to maps and images included with the Appellant's Written Submissions, Ms. Agrios identified where the proposed Religious Assembly will be located, and noted that it is surrounded by condominium buildings. She submitted that there are three issues before this Board:
- i) The Scope of Application for this Development Permit should contemplate the number of attendees rather than the number of seats.
  - ii) The Development Officer's justification for granting the parking variance failed to take into account actual parking demand.
  - iii) The proposed development will have a negative impact upon Blue Quill Shopping Centre Phase One ("Phase One").

The Scope of Application for this Development Permit should contemplate the number of attendees rather than the number of seats.

- [9] Ms. Agrios stated that in the instances where she has acted as legal counsel for mosques, the development permits have specified attendees rather than seats, as mosques do not typically have seats in their prayer halls. As such, regardless of the number of seats shown on the floor plan, the issue is the number of people attending.
- [10] In this case, the number of attendees are unclear. When the Respondent first made the application for the proposed Religious Assembly, the Scope of Application contemplated 456 seats, which was subsequently revised for 200 seats. The current application before this Board proposes 140 seats. Notwithstanding the changes in the contemplated number of seats, the floor area has remained the same, which raises the question of whether the number of attendees may be some unknown number limited only by the physical space available.
- [11] To address the potential problems arising from the number of attendees, she has observed development permits wherein the number of attendees is limited as a condition of the permit. However, these types of conditions result in enforcement issues. She was aware of at least one instance where the City had to provide its own bylaw enforcement officer to count the number of individuals attending a mosque.
- [12] She submitted that the appropriate limitation in this case would be to reduce the space for the proposed Religious Assembly, which would limit the number of people who can attend.

The Development Officer's justification for granting the parking variance failed to take into account actual parking demand.

- [13] The previous tenant at the subject location was Evolution Golf, which provided virtual golf simulators and also had a space for serving food and beverages. Evolution Golf was characterized as an Indoor Participant Recreation Service, which had high parking requirements of 55 parking spaces, calculated at one parking space per 3.3 square metres.
- [14] The Development Officer determined that since the proposed Religious Assembly requires 35 parking spaces, the net reduction in the required parking would result in sufficient parking and would justify granting the required parking variance. In doing so, the Development Officer failed to consider several key factors.
- [15] First, the proposed development is actually located in Phase Two of the Blue Quill Shopping Centre ("Phase Two"). Although it would appear that both Phase One and Phase Two comprise of one large shopping centre with one large shared parking lot, the two phases are actually located on two separate titled lots with two separate owners. However, the Development Officer assumed shared parking between the two phases, as evidenced by his use of terminology such as "shared parking site" or "shared site" in his Written Submissions. This assumption was an error. Although it is common for shopping centres to have parking easements registered on title, one can never assume that a parking easement exists.
- [16] Second, the parking study submitted by the Applicant for the initial application which contemplated 456 seats shows that the highest number of parking spaces needed by Evolution Golf was 15 parking spaces after 4:30pm. The Development Officer therefore failed to consider that the proposed Religious Assembly, which requires 55 parking spaces, amounts to an increase in the actual parking demand.
- [17] Upon questioning by the Board, Ms. Agrios acknowledged that the parking study is itself problematic. The study was based on both Phase One and Phase Two parking spaces as if they comprised one large parking lot. The study was also completed prior to full occupancy of Phase Two. Since then, a restaurant and dental office have been developed, resulting in greater utilization of the Phase Two parking spaces. Finally, the study was conducted by the Applicant, and not a neutral third party.
- [18] Ultimately, Phase One is already at capacity: as noted in the Development Officer's Written Submissions, Phase One is required to provide 121 parking spaces, and that is the number which has been provided. Phase Two, by contrast, is required to provide 166 spaces, and it has provided only 125. The deficiency of 41 spaces will logically result in parking spillover onto the Phase One parking lot.

The proposed development will have a negative impact upon Phase One.

- [19] While several options appear to be available to address the parking concerns, all of these options remain problematic.
- [20] Ms. Agrios referred to a letter from the Applicant to the Development Officer, which stated that as per their portion of the ownership of the subject building, 26 parking spaces would be available for the Applicant's use. Ms. Agrios pointed out that no documentation has been submitted to demonstrate that an agreement exists where individual Phase Two tenants have been allocated specific reserved parking stalls. The Applicant's assertion with respect to those 26 parking spaces therefore does not mitigate the impact of the deficiency in 41 parking spaces upon Phase One.
- [21] While offsetting the hours of operation of tenants may be feasible for some shopping centres, doing so would not be appropriate in this case. The biggest parking demand will arise from the Friday afternoon service from noon to 3 pm for the proposed mosque. Referring to Tab 7 of the Appellant's Written Submissions, which included a tenant list for Phase Two and their respective hours of operation, Ms. Agrios noted that all the tenants operate during daytime hours. As such, there will be overlap between the peak hours of operation for the mosque as well as the Phase Two businesses.
- [22] Another option is for the mosque attendees to utilize on-street parking. However, on-street parking is already heavily used by the nearby condominium and multi-family developments. Referring to Google Maps imagery included in the Appellant's Written Submissions, Ms. Agrios also noted that on-street parking is restricted by the placement of a fire hydrant, crosswalk, bus stops and seasonal parking.
- [23] Since there are no viable alternative parking arrangements, excess vehicles from the proposed development will likely spill over onto the Phase One parking lot. Referring to photographs in Tabs 8 and 9 of the Appellant's submissions, Ms. Agrios noted the boundary line between Phase One and Phase Two parking spaces, and identified the Phase One parking spaces that would be most impacted by the spillover parking.
- [24] Upon questioning by the Board, Ms. Agrios submitted that should the Board uphold the Development Permit, a condition should be added to ensure that parking be enforced by the adjoining property owner and tenants.

*ii) Position of the Development Authority*

- [25] The Development Authority was represented by Mr. N. Shah.
- [26] Mr. Shah submitted Exhibit "A", a copy of the approved floor plan for Evolution Golf. He identified the 200 square metres of public space for the Accessory food and beverage area in the floor plan, which required 56 parking spaces. The golf simulators were

designed to accommodate up to 36 users, which require 9 parking spaces. The total required parking spaces for Evolution Golf was 65 parking spaces.

- [27] In response to the Appellant's submission that the new restaurant will result in an increased demand for parking, Mr. Shah noted that the parking calculations included in his Written Submissions already reflect the new Bar and Neighbourhood Pub, which only gets busy on Friday evenings, and does not overlap with the proposed mosque's afternoon prayer hours from 1 pm to 3 pm.
- [28] Mr. Shah drew attention to Section 54.1(1)(b)(ii) of the *Edmonton Zoning Bylaw*, which states in part that the off-street parking regulations contained within Section 54.1 shall not apply except "where any building or Use undergoes a change of Use, intensity of Use or capacity and the change results in an increase in the parking requirements". Since the proposed development is for a change in Use from an Indoor Participant Recreation Service to a Religious Assembly and does not pose an increase to the parking intensity, the parking regulations should not apply. On this basis, he granted the required parking variance and approved the development.
- [29] Upon questioning by the Board, he confirmed that the different types of Uses and the different actual demand on parking at different times of the day were taken into account when he made his decision.

*iii) Position of the Respondent, GSKSC Group Inc.*

- [30] The Respondent was represented by legal counsel, Mr. J. Murphy.
- [31] Mr. Murphy explained that when the Applicant first approached him, he informed them that he would not be able to obtain an approved permit for a Religious Assembly for 456 seats. Based on his advice, the Applicant amended the application to 200 seats, and following further discussions with the Development Officer, finalized a proposal for 140 seats.
- [32] The change from 456 to 140 was made possible because the Applicant has decided to not close down the existing mosque located on 106 Street, north of 34 Avenue in the Ermineskin Shopping Centre. As a result, the congregation will be split between the two locations.
- [33] Referring to the approved plans, he clarified that the representation of prayer mats in the plans are the equivalent of the proposed 140 seats. He confirmed that "seats" equates to "occupancy" or the maximum number of worshippers who will be attending for prayer service.
- [34] With respect to the Development Officer's reliance on section 54.1(1)(b)(ii) as justification for the parking variance, Mr. Murphy concurred with his interpretation. section 54.1(1)(b)(ii) should be interpreted to mean that only where there is a change of

Use, and only if that change will result in a more intense use, should the parking regulations apply. Where the intensity of use is actually reduced, the reverse should hold true and the parking regulations should not apply.

- [35] Furthermore, the Development Officer is required to take into consideration sections 54.1(2)(g) and (h). Section 54.1(2)(g) provides that a variance to the vehicular parking requirements under Schedule 1 may be granted only “in cases where the nature of the Use, the size of the Site, or other physical constraints result in a situation where the requirements cannot be met on-site without unnecessary hardship or practical difficulties.” Section 54.1(2)(g) further contemplates that a reduction to the parking requirements may be warranted where “the applicant can demonstrate that there is complementary use of the parking or loading facilities.”
- [36] In applying sections 54.1(2)(g) and (h), the Development Officer took into consideration the mixed uses for the subject Site. In other words, a mosque attendee might stop by the nearby restaurant located in Phase One, or make use of other services located in Phase One. In this way, the *Edmonton Zoning Bylaw* contemplates a more efficient use of resources: where a Site such as the Blue Quill Shopping Centre has multiple uses, it is intended that one vehicular trip will be for the purpose of multiple uses. He submitted Exhibit “B”, form letters from Phase One business owners who expressed support for the original application for a Religious Assembly of 465 seats.
- [37] Regarding the conditions or alternate scenarios presented by the Appellant, Mr. Murphy submitted that that the Applicant did not support these alternatives. First, with respect to the suggestion that the Applicant and/or the owner of Phase Two enforce parking, he noted that there is no parking easement or parking agreement between the two phases. As such, Phase One could choose to impose its own parking restrictions on their property.
- [38] Second, while it might be possible for the two phases to be physically separated, circulation and emergency access problems could arise.
- [39] Third, the suggestion that the Development Permit include a condition to restrict the number of attendees is unnecessary. It is not a common practice as no other permits limit the number of attendees, and to do so would be a slippery slope.
- [40] Mr. Murphy noted that the Applicant has been historically conscientious about parking enforcement. At its other location in the Ermineskin Shopping Centre, there are designated parking spaces for the other tenants on the site. Attendees who park in these restricted stalls have had their vehicles towed. Upon questioning by the Board, he identified parking space to the west of the proposed mosque that could be converted into restricted parking reserved for attendees. In his view, these spaces would be suitable for restricted parking as they are not easily accessible by the other tenants of Phase Two.
- [41] Mr. Murphy confirmed that for holiday celebrations exceeding 140 attendees, such events will be held elsewhere.



*iv) Rebuttal of the Appellant*

- [42] With respect to the 65 parking spaces for Evolution Golf (nine spaces for the golf simulators and 56 for the Accessory food and beverage), Ms. Agrios noted that it was unlikely that many people would head to Evolution Golf for the restaurant. It is more likely that Evolution Golf required only nine parking spaces in actuality. As such, the proposed Religious Assembly still represents an increase in intensity of use.
- [43] With respect to the Development Officer's submission that the new restaurant will not overlap with the mosque's Friday afternoon service, she noted that this restaurant advertises its operating hours as noon to 2 a.m.
- [44] Regarding the letters of support submitted by the Respondent in Exhibit "B", she noted that most are dated November 2015, and a few from January 2016. The letter of support from Sun City Tanning was not signed by an owner. When these letters were first brought to the Appellant's attention, the tenants did indicate some concerns about the information provided to them when they were asked to sign the letters. Had the Appellant known that these letters would be submitted to this Board, it would have endeavoured to provide a written retraction of those letters.
- [45] She also disagreed with the Respondent's position that imposing the requested conditions on this permit would be unusual. She submitted that there is nothing special about seeking conditions for anything requiring a variance. In this case, Religious Assemblies do generate high parking demands, and it is typical to impose conditions related to the policing of parking. However, she acknowledged that the separation of Phase One parking from Phase Two could lead to circulation and emergency access issues, and it will likely be difficult to enforce the requested conditions.
- [46] She submitted that the parking study must be carefully scrutinized, as the study was for the entire shopping centre, and did not cover the current situation with the new tenants. No parking study for Phase Two alone was provided, and there is no actual evidence that there is sufficient parking accommodation for the required parking variance.
- [47] She acknowledged that in some instances, shared parking is appropriate in a mixed use situation. However, in this instance, where one tenant has a significantly more intense use, shared parking is not appropriate and the parking variance should not be granted.

**Decision**

- [48] 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 CONDITIONS as set out by the Development Authority in its decision issued on September 2, 2016, for Project Number 222761485-001.

[49] In granting this development, the following VARIANCE to the *Edmonton Zoning Bylaw* is allowed:

- 1) Schedule 1(A)(45) of Section 54.2 is relaxed to permit a deficiency of 41 parking spaces, or a total of 125 parking spaces instead of the required 166.

### **Reasons for Decision**

[50] The proposed development is for a change in Use from an Indoor Participant Recreation Service to a Religious Assembly, which is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone.

[51] The Board was provided with several documents that relate to a previous application for a Religious Assembly on this Site, which involved greater intensity requiring 465 seats. The application has since been revised for 140 seats, and the Board therefore places no weight on these documents, which included a parking study and letters from tenants in support of the original application for 465 seats. The Board notes that no neighbours within the 60 metre notification area appeared at the hearing in support or opposition to the subject development.

[52] The Board reviewed and considered the documents and submissions which directly relate to the subject development, including the memorandum from the City's Urban Transportation department, which concluded that it had no concerns with the parking variance. The Board also reviewed the maps and images submitted for the subject development and the surrounding area, and finds that the property is surrounded by arterial roadways and bus routes. Given the major transit routes that run directly past this site and the availability of on-street parking, the Board finds that there will be some mitigation of the off-street parking concerns expressed by the Appellant.

[53] The Board accepts the information provided by the Development Officer with respect to his parking calculation, and finds that the proposed Use results in a decrease in the parking requirements. Pursuant to section 54.1(b)(ii), since the parking requirements have decreased, the parking regulations under Section 54 do not apply.

[54] Accordingly, the Board accepts the Respondent's interpretation of sections 54.1(2)(g) and (h). In particular, the Board is persuaded by section 54.1(2)(h), which states in part:

In the case of the multiple Use of a Site, the Development Officer shall calculate the vehicular parking... for each individual Use and the total shall be deemed to be the required vehicular parking... *unless the applicant can demonstrate that there is complementary use of the parking or loading facilities which would warrant a reduction in the requirements.*  
[emphasis added]

- [55] In determining whether there is “complementary use” of the parking facilities which would justify a reduction to the parking requirements, the Board accepted the Development Officer’s conclusion that the hours of operation for the most intense use for the subject Religious Assembly (that being Friday afternoon, from approximately noon to 3 p.m.) generally do not overlap with the most intense use of neighbouring tenants. The Board was also persuaded by the Respondent’s contention that section 54.1(2)(h) contemplates that individuals visiting the subject Site may make use of the other services provided at the Site, whether those services are located in Phase One or Phase Two. For these reasons, the Board finds that the Applicant has demonstrated that there is complementary use of the parking facilities which justifies the relaxation of the parking requirements.
- [56] Finally, the Board was not presented with sufficient evidence that the proposed development will cause a parking concern. The Board notes that the Site parking for Phase Two has been operating under a larger variance in terms of required stalls for the entire Site. Based on the photographic evidence, it appears that many vacant stalls exist. In any event, this development proposes a decrease in the variance to the number of parking spaces required for the Site.
- [57] The Board also considered providing operational conditions to this permit, but finds that it was not provided with sufficient information as to what those conditions would entail, and furthermore, whether such conditions would be appropriate, due to potential impacts upon other operations on the Site. Accordingly, the Board has declined to impose the operational conditions as requested by the Appellant. The Board notes that should the parking concerns of the Appellant be realized, the Appellant is free to implement parking restrictions on its own property.
- [58] For the above reasons, 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. The required variance is therefore granted pursuant to section 687(3)(d) of the *Municipal Government Act*, and the development is allowed.

Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

W. Tuttle, N. Hack, R. Hobson, S. LaPerle

**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*, 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, 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.*