

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: November 6, 2015
Project Number: 170108066-001
File Number: SDAB-D-15-248

Notice of Decision

This appeal dated September 25, 2015, from the decision of the Development Authority for permission to:

Change the use from Business Support Services to Personal Service Shops with Accessory Convenience Retail Stores (Divine K9 Dog Care Service Ltd)

on Plan B4 Blk 15 Lot 151, located at 10529 - 116 Street NW, was heard by the Subdivision and Development Appeal Board on October 22, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject site is zoned DC2.671 Site Specific Development Control Provision and is within the Central McDougall / Queen Mary Park Area Redevelopment Plan.

The development permit application was refused because the Development Officer determined that the proposed Principal Use was a Small Animal Breeding and Boarding Establishment (dog boarding and training) and Personal Service Shop (pet grooming). Small Animal Breeding and Boarding is not a Listed Use in the DC2.671 Zone.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant received on October 22, 2015;
- A written submission from the Development Officer dated September 28, 2015;
- A copy of the Canada Post delivery confirmation;
- A copy of the Central McDougall / Queen Mary Park Area Redevelopment Plan;
- A letter of support from the Queen Mary Park Community League received on October 21, 2015; and

- One on-line response in opposition to the proposed development from an affected property owner

The Board heard from the Appellant, Ms. M. Burrill, of Divine K9 Dog Care Services Ltd., who provided the following information:

1. She referred the Board to her written submission.
2. The Development Officer determined the proposed principal uses were Small Animal Breeding and Boarding Establishment and a Personal Service Shop. She agrees that Small Breeding and Boarding is not a listed use in this DC zone but they are trying to fit their business into the Personal Service Shop category, which is a listed use.
3. There is some confusion regarding what temporary boarding means. In the industry, boarding means 24 hours or more per stay. Their business does not offer this type of boarding service.
4. They offer a post-7:00 p.m. service for clients who work shifts, such as doctors and nurses, and they are currently looking for another location to accommodate their clients who use this service.
5. They intend to use the current location just for stays during the day. The plan is to have people drop their pets off so that they can be shuttled to the new location for the post-7:00 p.m. service. They have changed their web site to show their post-7:00 p.m. service will be operating at a new location in the future.
6. The present location allows them to do grooming and day care service which is an important part of their business plan.
7. The Development Officer was mistaken about the deficiency of seven parking spaces. They have 6 spaces in the front of the building, 4 spaces in the rear outside the fence, and 2 more spaces inside the fence. There is also lots of street parking on 105 Avenue.
8. Their customers stay an average of five minutes to drop off and pick up their pets. The result is that, throughout most of the day, their parking spaces are empty.
9. It is correct that a Development Permit application was refused at 10552 – 114 Street because Small Breeding and Boarding Establishment is not listed as a Permitted or Discretionary Use. They were approved for operations at that space and have operated there for several years.
10. After a complaint by a former employee, the Development Authority reviewed the case again and denied the Use despite the fact that they had been in operation at 10555 – 114 Street for almost a decade. Due to that problem, they had to move the business to the current location.
11. She referenced two letters of support in her submission:
 - a. a letter of support from the Queen Mary Park Community League (Photo 11); and
 - b. a letter of support from a client (Photo 12).
12. They provide service to over 300 clients, including doctors and nurses who live or work in the community. They feel their customers need and rely on their business and would be greatly affected without it.
13. The complaint from a neighbour arose after they asked that neighbour not to park in their loading area. This neighbour is an auto business and has many cars on his premises. Following this complaint, an animal control officer reviewed their operation and told her the complaint was considered invalid.

Ms. Burrill provided the following responses to questions:

1. No training is done on site; this will be done at another location.
2. She referred to the site plan to show where the six parking spaces at the front and the six parking spaces at the rear of the premises were located.
3. Her application asks for an Accessory Convenience Retail Stores Use to allow them to sell dog food, treats, leashes and collars to their customers.
4. They did offer a post-7:00 p.m. boarding service at their previous location until they were notified this was not allowed, at which point, they stopped their post-7:00 p.m. service. They no longer offer this service at their new location either. The new location would serve as a drop-off point to shuttle dogs to an off-site facility after 7:00 p.m.
5. The training area shown on the site plan has not been used for training purposes since they moved to the location, and there are no plans to use it for training in the future.
6. She was not aware that the Small Animal Breeding and Boarding Use is only available in Agricultural and Reserve Zones; she thought this type of use was allowed in Industrial Zones.
7. There are currently twenty to thirty dogs on site during the day.
8. She feels the service they provide fits in with the definition of Personal Service Shops.
9. She acknowledged that the sign on the premises indicates obedience training and the site plan shows a training room at the site. That sign was prepared before she was aware that training was not allowed.
10. Her understanding is that if there is no training of dogs on site and no post-7:00 p.m. boarding service, the Use at the present location would fit into the Personal Service Shops Use class. This class applied to their previous location.
11. She referred to Photo 2 in her submission which illustrates how she has been actively seeking help from a realtor to find an alternate location for her post-7:00 p.m. boarding services.
12. It was her contention that the Development Officer failed to follow the directions of council because the application was refused based on the post-7:00 p.m. boarding service and the training which was mentioned on website. The Use at the site has changed so as to exclude the post-7:00 p.m. and training services, such that the Use is no longer contrary to the directions of council.

The Board heard from Ms. L. Viarobo of the North Edge Business Association who provided the following information:

1. She indicated that she was with the North Edge Business Association which is the area bounded by 105 Avenue to the south and to the back lane at 107 Avenue to the north; and from 101 Street west to the cemetery.
2. The Association has been dealing with the Area Redevelopment Plan for the area and she acknowledged that Use Class Definitions can be complicated.
3. The area has been mostly treated as a commercial zone. She felt that the *Edmonton Zoning Bylaw*, as written, doesn't always anticipate changes that occur over time.
4. She referenced examples in other municipalities to show how they have dealt with doggie day cares and boarding facilities. The City of Langley has separate Use classes for

boarding and for doggie day care. Similarly, the City of Port Coquitlam separates pet grooming and pet day care from the boarding Use.

5. This neighbourhood is becoming more urban, and many of the new residents have pets. It is not realistic for these people to seek day care services in rural areas. She feels that this is contrary to what council wants, which is denser urban development.
6. She also feels that the Development Authority may not deal with doggie day care applications consistently.

The Board heard from Mr. A. Tran, the Appellant's Landlord, who provided the following information:

1. He referred to the site plan and pointed out that the building occupies only 5,000 square feet of the site and the rest of it is for parking. He feels there is plenty of parking on site.
2. The previous location of the Appellant's business had no parking.
3. He felt that the neighbour who filed a complaint was a difficult neighbour.

The Board heard from Mr. C. Chan, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. Day care services for pets are usually put under the "Animal Hospital Shelter" Use class.
2. He indicated that the after hour day care in the proposed development was not in itself a violation of the boarding and training category.
3. He noted that the proposed development had been refused on the basis that there was an indication on the website of both training and overnight care of animals.
4. Under the DC2 Site Specific Development Control Provision, parking in the Front Setback is not permitted; therefore, the area of the Front Setback that is being used for parking cannot be included in the Parking calculation.
5. He acknowledged that day care is not specifically defined in the *Edmonton Zoning Bylaw*. If no boarding and training were involved in the proposed development, he would have approved it by granting a variance with respect to the Parking deficiencies.

Ms. Burrill had nothing to add in rebuttal.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. Section 641.4(b) of the *Municipal Government Act* (MGA) states the following:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district 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.* [Emphasis added]

2. The Board recognizes that the original Development Permit application specifies Personal Service Shops with Accessory Convenience Retail Stores as the defined Uses within that application. The Board notes that section 11.2(3) of the *Edmonton Zoning Bylaw* states, in part, that the Development Officer “shall review each Development Application to ascertain its appropriate development class, and may require the applicant to apply for a Permit for a different class”.
3. The Board finds that the Development Authority had the duty to review the application before it with respect to the Uses defined. In determining a different Use Class, the Development Authority was not in contravention of its duties under section 11.2(3) of the *Edmonton Zoning Bylaw*. As such, pursuant to s 641.4(b) of the MGA, the Board cannot reach the conclusion that the Development Authority did not follow the directions of council and it has therefore determined that no appeal lies within this application.
4. The drawings provided by the Applicant clearly indicated a specific training area and the Appellant confirmed through their presentation that their intent was, at the time of their development application, to train animals onsite. This was further confirmed by the research completed by the Development Officer during their review that the website and Site signage indicated the provision of boarding and training services.
5. It is also a factor that the Development Authority's determination of the Use class at the time of application was that of a Small Breeding and Boarding Establishment, and that a comprehensive review of the Personal Service Shop and Accessory Convenience Retail Stores Uses was not completed by the Development Officer at the time of the application.
6. The Board recognizes the submissions and presentations provided to them through this hearing and considered all aspects before determining that the Development Authority did follow council's instructions.
7. The Board notes the support of the community league, The North Edge Business Association, as well as the letters of support from the development's clientele.
8. The Board accepts that the nature of the proposed development and its Use classification as initially determined by the Development Authority has changed. The Board further recognizes that had this new information been provided at the time of application, the Development Authority would have approved this development as a Personal Service Shops with Accessory Convenience Retail Stores, and would have granted the required variance of 7 parking stalls.
9. Notwithstanding this conclusion, this information was presented after the decision of the Development Authority and the Board is still bound by Section 641.4(b) of the MGA. Since the Board has determined that the Development Authority did follow the directions of council, no appeal lies from the Development Authority's decision regarding this application within a direct control district, and the Board is therefore statute barred from considering the merits of the development.

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.

Vincent Laberge
Subdivision and Development Appeal Board