

Edmonton Subdivision and Development Appeal Board

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Date: September 1, 2015
Project Number: 171683781-001
File Number: SDAB-D-15-190

Notice of Decision

This appeal dated July 26, 2015, from the decision of the Development Authority for permission to:

Convert from a Single Detached House to a Religious Assembly (36 people) and to construct exterior alterations (add 2 windows to facade)

on Plan 2429HW Blk 36 Lots 13-14, located at 5335 - 112 Avenue NW, was heard by the Subdivision and Development Appeal Board on August 19, 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 (“MGA”).

The Board heard an appeal of the decision of the Development Authority to refuse an application to convert from a Single Detached House to a Religious Assembly (36 people) and to construct exterior alterations (add 2 windows to facade) located at 5335 – 112 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused because the proposed Religious Assembly does not meet the general purpose of the RF1 Single Detached Residential Zone. It is the opinion of the Development Officer that the proposed location of the Religious Assembly will negatively impact the peaceful enjoyment of the properties of nearby residents and unduly interfere with the amenities of the neighbourhood. This includes potential overflow of on-street parking in front of abutting and surrounding low density residential development. No hardsurfacing is proposed for the on-site parking spaces.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Authority received on August 14, 2015.
- Seven on-line responses from affected property owners in opposition to the proposed development.

The Board heard from the Appellant, Ms. M. Bostan, who was representing, Mr. E. Torres, the owner of the building, who was also present. They provided the following information:

1. They submitted the following exhibits:
 - Exhibit "A": A written submission outlining the background of the building and information regarding the proposed development.
 - Exhibit "B": A photograph of a day care located at 5347 – 112 Avenue.
2. The subject building is 3,600 square feet and has not been a single detached house for some time. It has operated as a commercial use, a combined commercial / residential use and was used as an office / warehouse for a political party.
3. The owner of the building has been paying commercial property taxes since 2006.
4. Ms. Bostan is a real estate agent and the applicant for the requested change of use to a religious assembly. She has looked at possible uses for this building and feels that "religious assembly" is the highest and best use as she has had many requests for this type of service in the community.
5. There is an existing church and day care on the corner of 112 Avenue and 55 Street.
6. The property across the street from the proposed development is a school.
7. They intend to pave the rear of the property to address the parking concerns of the neighbours. Nine parking spaces would be provided in the rear which would allow a building occupancy of 36 people (4 people to a car).
8. The owner has renovated the building to enhance its appearance and has tried to sell this property for six years.
9. The current owner has used the building as an office and a warehouse and has never received any complaints.
10. The potential new tenant is part of a religious group.

They provided the following responses to questions:

1. There are two single detached houses between the existing church and the proposed development.
2. The proposed use is to provide counselling related to family issues and to provide space for interaction among community members. They are not certain what designation would be appropriate for the proposed use and agreed it could be viewed as a social service agency rather than a religious assembly.
3. The Applicant, Ms. Bostan, is not affiliated with any of the religious assemblies interested in the property.
4. The owner spoke informally over the years with a few neighbours but no specific community consultation was conducted related to this proposed development.
5. Under the proposed agreement Mr. Torres would remain the owner and the new occupants would have a rent to own agreement with a 3 year option to purchase.
6. There is no current agreement between the proposed tenant and the owner because the tenant wants a development permit in place prior to signing an agreement.

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

1. He was not the Development Officer who had dealt with this application; however, he is familiar with the file.
2. The proposed development sounds more like a social service agency than a religious assembly since it appears that a worship component is not included.
3. The records show that the existing building was built in 1951 and has accommodated a number of non-conforming uses since then.
4. In his view the building looks like a commercial or office building and has had a number of past uses including a grocery store, a political party office and an art gallery. It is difficult to establish the exact history of the building since that involves researching numerous permits.
5. He confirmed that the subject property has always been zoned RF1 Single Detached Residential Zone although there is a record of a re-zoning inquiry in 2014. Re-zoning would be required to allow any type of commercial development.
6. He could not explain how approval had been given in the past for uses that were neither permitted nor discretionary in this RF1 Single Detached Residential Zone.

The Board heard from Ms. Lily Tsui, the adjacent neighbour to the east, who provided the following information:

1. She has seen some work being done on the subject building including what she believed were basement leak repairs, the addition of a concrete block fence, and changes to the front face of the building.
2. In her view, she did not want the building to remain empty; however, the proposed development lacks clarity as to how the building would be used.
3. Her overriding concern is the impact on traffic and parking in the area.
4. She feels there are better Uses for the building.

The Board heard from Mr. R. Haasdyk, a long-time resident of the neighbourhood who provided the following information to the Board:

1. He had no position regarding the proposed development and only wished to provide some background information regarding the subject property.
2. The original building was constructed in 1951 and had operated as a grocery store in which the proprietor also resided. This could perhaps explain the RF1 Single Detached Residential Zone designation.
3. The grocery store operated until approximately 1975 at which time a political party took over the building and used it essentially as warehouse space. He did not know when that use discontinued.

Mr. Torres made the following points in rebuttal:

1. He has seen a previous permit for the building.
2. He had made an application for a Business Licence in 2012 which he understood was refused because the property was zoned RF1 Single Detached Residential Zone.

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 687(3) of the *MGA* states “in determining an appeal, the subdivision and development appeal board

....

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.”

2. A Religious Assembly is a Discretionary Use in the RF1 Single Detached Residential Zone; however, based on the evidence, the Board has determined that the proposed development conforms more appropriately to a commercial development Use, which is not allowed in the RF1 Single Detached Residential Zone.
3. Evidence was presented that the proposed development would be used for counselling and community services, which is neither a Permitted Use nor a Discretionary Use in the RF1 Single Detached Residential Zone.
4. The Board finds the proposed development does not conform to the definition of a Religious Assembly, and information supporting that Use was insufficient.
5. The Board notes that a number of concerned neighbours, as well as the Highlands and District Community League voiced concerns regarding the proposed development and the potential impact of excess parking and traffic.
6. Pursuant to section 687(3)(d)(ii) of the *MGA*, the Board does not have the authority to approve this 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.

Brian Gibson
Subdivision and Development Appeal Board

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Date: September 1, 2015
Project Number: 096390936-003
File Number: SDAB-D-15-191

Notice of Decision

This appeal dated July 22, 2015, from the decision of the Development Authority for permission to:

Add a Non-accessory Parking Use to an existing Private Club / Indoor Participant Recreation Service Building (parking for all Stadium events - Ital-Canadian Seniors Association)

on Plan 155HW Blk 15 Lot A, located at 9111 - 110 Avenue NW and Plan 2191EO Blk OT, located at 11100 - Stadium Road NW, was heard by the Subdivision and Development Appeal Board on August 19, 2015.

Summary of Hearing:

The Board heard an appeal of the decision of the Development Authority to refuse an application to add a Non-accessory Parking Use to an existing Private Club / Indoor Participant Recreation Service Building (parking for all Stadium events - Ital-Canadian Seniors Association) located at 9111 – 110 Avenue NW and 11100 Stadium Road NW. The subject site is zoned US Urban Services Zone and is within the Boyle Street / McCauley Area Redevelopment Plan.

The development permit application was refused because Non-accessory Parking is neither a Permitted nor a Discretionary Use in the US Urban Services Zone.

Prior to the hearing the following information was provided to the Board:

- A written submission from Legal Counsel for the Appellant received on July 17, 2015.
- A written submission from the Development Authority received on August 12, 2015.
- Correspondence from Legal Counsel for the Appellant, Biamonte Cairo & Shortreed, advising that Ms. F. Belzil will be their representative at today's meeting on behalf of the Ital-Canadian Seniors Association.
- Excerpts from the Boyle Street / McCauley Area Redevelopment Plan.

At the outset of the appeal hearing, one of the panel members, Mr. J. Kindrake, disclosed that he had previously worked with Ms. Belzil, Legal Counsel for the Appellant. All parties in attendance confirmed they had no opposition to the composition of the panel.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (“*MGA*”).

Ms. F. Belzil, Legal Counsel for the Ital Canadian Seniors Association (“the Society”), provided the following information to the Board:

1. When her associate, Ms. Nickel, attended the Subdivision and Development Appeal Board (“SDAB”) office on Friday, July 17, 2015, to file the appeal she did not have sufficient funds to pay the full filing fee. Ms. Nickel was advised by SDAB staff that she could pay the balance on the following Monday and her appeal would be accepted.
2. Had Ms. Nickel known there would be any problem with paying the fee she would have used a personal credit card to pay the difference.
3. There was some confusion within the SDAB office resulting in a technical error with substantial compliance in the filing of the appeal.
4. Mr. C. Lee, the Development Officer, was called upon to advise the panel of the exact date that the refused development permit application was given to the Society. He confirmed that he had physically handed the Notice of Refusal to the Society’s President on July 3, 2015.

After a short adjournment the Board ruled that substantial compliance of the filing conditions were met on Friday, July 17, 2015, as the clerk had taken partial payment along with a signed receipt of appeal. The Board therefore assumed jurisdiction pursuant to section 686(1) of the *MGA*.

The Presiding Officer indicated that Non-accessory Parking is neither a Permitted nor a Discretionary Use in the US Urban Services Zone. In response Ms. Belzil replied she is amending her argument and proceeding on the basis that the Society’s use of parking to raise funds could be characterized as an “Accessory Use” to the Society’s objectives. She argued that such parking activities provided funds to the Society which enabled them to provide some of its programs and services and thus was Accessory in the financial sense, not in the physical sense.

Ms. Belzil provided the following information to support changing the application from a “Non-Accessory Parking Use” to an “Accessory Parking Use”. She was accompanied by Ms. M. Mauro, President of the Board of Directors of the Society.

1. She submitted the following exhibits:
 - Exhibit “A” A written submission containing extracts from the *Edmonton Zoning Bylaw*, a description of the Society’s purpose, and an overview of their programs and activities.
 - Exhibit “B” A map of the area, and photos of the parking lot and the surrounding area.
 - Exhibit “C” A petition with additional signatures in support of the development.
 - Exhibit “D” Additional letters of support.
2. She directed the panel to the definition of “Accessory” under section 6.1(2) of the *Edmonton Zoning Bylaw* and felt this definition should be interpreted in a broad manner when dealing with a non-profit society as opposed to a commercial business.

Fundraising is natural to a non-profit society or a registered charity. Raising funds from paid parking for football games at Commonwealth Stadium was incidental and subordinate and devoted to the principal use for the building.

3. She gave a history of the Society which was incorporated under the Societies Act and is not restricted to people of Italian decent. There are 500 members across the City who put in approximately 6,500 volunteer hours per year. One member in attendance today (92 years old) has been a volunteer since the Society's inception.
4. This is a strong community association which provides numerous services and programs, as set out in Exhibit "A", including bocce teams, school outreach programs, recreational activities and drop-in programs.
5. Use of the parking lot during football games began ten years ago. She provided photos to show the location of the subject lot in relation to the Society's premises and Commonwealth Stadium.
6. Parking is only provided during the 10 to 12 annual Edmonton Eskimo games and occasionally for special events such as the recent FIFA soccer games. This amounts to approximately 3% of the total parking usage on the site. The 52 stall parking lot provides about \$1,000 per game generating a minimum of \$10,000 per year.
7. Revenue from parking goes directly to fund the Society's social programs.
8. The parking lot is well supervised, well maintained and surrounded by a chain link fence. Volunteer staff patrol and collect money from patrons ensuring no one is parking on the streets and alleys around the parking lot.
9. The Society's hall is rented out for 50 to 60 events per year to members and third parties. Access to the parking lot is part of the rental agreement.
10. Approximately 50 patrons use the Society's facilities per day increasing to 60 to 100 patrons on weekends.
11. The Boyle Street / McCauley Area Redevelopment Plan supports the role of community organizations in revitalizing the area.
12. 52 cars parking 10 to 12 nights per year is not imposing an undue hardship on the community and the Society is providing a solution for parking problems in the area.
13. No one has appeared today in opposition to the paid parking use and there has been no written opposition received.

Ms. Belzil provided the following responses to questions:

1. Allowing the Society to continue to charge for parking would not set a precedent as there are a limited number of charitable organizations like this in the neighbourhood. The Norwood Legion may be in a similar situation.
2. This is not run as a commercial parking operation. The majority of the time the parking lot is used by patrons visiting the building.

The Board heard from Mr. C. Lee, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. He provided other examples of unsuccessful applications for Non-accessory Parking lots in other areas of the City.

2. He confirmed that if people park their vehicles on the subject lot and walk to Commonwealth Stadium, it is considered Non-accessory Parking.
3. The *Edmonton Zoning Bylaw* is not privy to financial reasons and therefore the application before the Board cannot be amended from Non-accessory Parking to Accessory Parking. The Business Licence aspect of this development is related to Community Standards and is not within the purview of this Board.

The Board heard from Mr. K. Kobi, representing City of Edmonton Major Events and Operations, who provided the following information:

1. He was not here to speak about the zoning bylaws.
2. He indicated his support of parking at the subject site.

Ms. Belzil declined the opportunity for 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 687(3) of the *MGA* states “in determining an appeal, the subdivision and development appeal board

....

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or

- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.”

2. The Board confirms the Development Officer's decision that this is a Non-accessory Parking Use which is neither a Permitted nor a Discretionary Use in the US Urban Services Zone.
3. The Appellant conceded that parking patrons are not entering their facility but going to Commonwealth Stadium for events.
4. "Fundraising" does not constitute a planning reason for re-classifying the proposed Use as Accessory Parking.
5. The Board does acknowledge that the Ital-Canadian Seniors Association does good work within the community and acknowledges the petition and letters of support received; however, pursuant to section 687(3)(d)(ii) of the *MGA*, the Board does not have the authority to approve the proposed Non-Accessory Parking Use as it is not a listed Use in the US Urban Services Zone.

Important Information for the Applicant/Appellant

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