



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 5, 2016
Project Number: 188290650-001
File Number: SDAB-D-16-100

Notice of Decision

- [1] On April 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 24, 2016. The appeal concerned the decision of the Development Authority, issued on March 24, 2016, to refuse the following development:

Change the Use from Single Detached Housing to a Child Care Services Use (28 Children - 4, 12-18 months/ 6, 19 months- 3 yrs/ 8, 3-4.5yrs/ 10, 4.5-7 yrs) and to development on-site outdoor play space. [unedited from the Development Permit decision]

- [2] The subject property is on Plan 5261TR Blk 16 Lot 9, located at 1498 - Knottwood Road North NW, within the RF1 Single Detached Residential Zone.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Appellant's written submissions, received March 31, 2016;
 - Copy of the Development Permit application with attachments;
 - Copy of the refused Development Permit decision;
 - Development Officer's written submissions, dated April 11, 2016; and
 - One letter and one online response in opposition to the development.

Summary of Hearing

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

i) *Position of the Appellants, Mr. D. Al-Tawil and Mrs. D. Al-Tawil*

- [6] The Appellants were accompanied by Mr. R. Demain, a real estate agent who had advised the Appellants with respect to the purchase of the subject property and its plausibility for a Child Care Services Use.

Section 80(8)(1)

- [7] While the Appellants recognized that the subject property is not a corner Site and therefore, not considered a “preferred location” for a Child Care Services Use as per Section 80(8)(1) of the *Edmonton Zoning Bylaw*, the Appellants noted that the site remains easily accessible, providing minimal disturbance to the area.
- [8] In support, the Appellants referred to various pictures of properties with approved Child Care Services Use in the vicinity of the subject development. These properties were not located on corner sites, yet operate efficiently and benefit the community which requires such services.
- [9] To demonstrate the community’s need for additional Child Care Services, the Appellants referred the Board to a petition of support signed by 14 individuals, representing 13 properties within the 60 metres notification area.
- [10] The Appellants acknowledged the online response from a neighbour in opposition to the development. However, they also noted that the neighbour’s expressed preference for Child Care Services to be located in strip malls was merely one individual’s opinion; during the community consultation, another neighbour expressed a preference for daycares located in residential areas rather than in strip malls where they might be located next to a bar.
- [11] When questioned by the Board about the community consultation process, the Appellants clarified that the consultation had been initiated after the development had been refused. During the consultation, they informed their neighbours that the development would be for a childcare centre that would be licensed under the provincial *Childcare Licensing Act*.

Section 80(8)(d)

- [12] The Appellants submitted that noise is typical of the location, as the site is located along a bus route, and across from a public school and park. However, to mitigate the impact of noise generated by children playing in the outdoor play space, the Appellants will attempt to coordinate outdoor play times with those of the school across the street.
- [13] In addition, there is fencing that encloses the entire outdoor play space, as well as some landscaping elements that will provide some buffer to the noise generated from children

playing outdoors. A walkway also separates the subject development from the neighbour to the west.

- [14] The Appellants were of the opinion that the daycare's drop off and pick up times would not coincide with the school's, further reducing noise and traffic impacts.
- [15] Upon questioning by the board, the Appellants confirmed that the daycare's drop-off hours will be between 7:00 a.m. and 8:00 a.m., and the pick-up hours will be between 5:00 p.m. and 6:00 p.m. By contrast, the drop-off and pick-up hours of the school are 8:00 a.m. to 8:30 a.m., and 3:30 p.m. to 4:00 p.m., respectively. By avoiding overlap in pick-up and drop-off hours with the school, noise and traffic impacts should be mitigated.

Section 54.2(4)(a)(vi)

- [16] Three on-site drop-off spaces are located on the required 7.0 m wide aisle access to the required two vehicular parking spaces in the garage. However, the Appellants submitted that the vehicular parking within the garage is for employees, who will arrive at the daycare prior to the morning drop-off hours, and will depart after the evening pick-up hours. As such, the drop-off spaces will not impact access to the vehicular parking spaces within the garage.
- [17] Mr. R. Demain also noted that the garage is not a typical detached garage, as it is located to the side of the house, which provides for a much deeper pad to allow for on-site pick-up and drop-off.
- [18] Three parking spaces are also available in front of the house, and one neighbour in support of the development has offered to provide off-site accessory parking if necessary.
- [19] The Appellants also noted that since the property is located on a major arterial road and bus route, employees can use public transportation. Upon questioning, the Appellants confirmed that there are no parking restrictions in front of the proposed development.
- [20] When questioned about whether they would be willing to decrease the number of children attending the school so as to meet parking requirements, the Appellants responded that they would be prepared to decrease the number of students to twenty, if necessary. They clarified that they had applied for 28 children because the site dimensions made it possible for up to 28 children to attend the daycare, but their intention is to care for approximately 20 children.

Loading Space and Bicycle Parking Requirements

- [21] The Appellants submitted that the daycare will be developed in accordance with the Alberta Health Services Guidelines, and the provincial *Childcare Licensing Act* and associated regulations, none of which stipulate a requirement for a designated loading area. In addition, they do not intend to use large loading trucks for the operation of their business.

[22] With respect to the bicycle parking requirements, the Appellants observed that given the age group of the daycare's children, it will be unlikely that they will bike to the site. However, if required, they are prepared to provide temporary storage options in the garage, or install a permanent bike rack.

ii) Position of the Development Officer, Ms. E. Peacock

[23] The Development Officer clarified that due to the configuration of the detached garage, wherein the garage door faces the interior of the site, an access driveway is required to get into the garage. As such, the three parking spaces allocated for pick-up and drop-off would block access to the garage.

[24] When questioned about whether a reduction to 20 children would resolve the parking issues, she stated that the parking requirements stem partially from the number of staff members. Unless staffing is reduced, two vehicular parking spots within the garage would still be required for staff parking, and the drop-off parking spaces located on the driveway would continue to hinder access to the garage.

[25] With respect to the Appellants' comparatives of Child Care Services located on interior lots, the Development Officer observed that since the zoning of some of the comparatives differ from that of the subject property, the variances needed may not be the same. She explained that the preference for Child Care Services located on corner lots is partially due to the additional parking space available for such lots, which could reduce traffic and congestion impacts.

[26] Finally, regarding loading space and bicycle parking requirements, she acknowledged that such requirements may be dependent on the scope of the application and scale of development.

iii) Rebuttal of the Appellants

[27] The Appellants were provided with the opportunity to provide rebuttal, and declined.

Decision

[28] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions:

- 1) Any associated signage on the Dwelling must not detract from the residential character of the neighbourhood.

[29] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

- 1) Section 80(8)(1) is waived to permit the site, which is located on an interior lot, to be used for Child Care Services.
- 2) The requirements under Section 80(8)(d) are met, and no variance is required.
- 3) Section 54.2(4)(a)(vi) is waived to permit three drop-off parking spaces on the access driveway, and two vehicular parking spaces in the garage for staff parking.
- 4) Section 54.4(3)(a) and Schedule 3(2) to Section 54.4 are waived to allow for a deficiency of one loading space, subject to the condition that large loading trucks shall not be used for the proposed development.
- 5) Schedule 2(1) to Section 54.3 is waived to allow for a deficiency of five bicycle parking spaces, subject to the condition that temporary bicycle storage shall be provided in the garage, as needed

Reasons for Decision

[30] Child Care Services is a Discretionary Use in the RF1 Single Detached Residential Zone.

Section 80(8)(1)(a)

- [31] Section 80(8)(1)(a) states that “in all low density Residential Zones the Development Officer shall, when making a decision on the suitability of the Child Care Service for the location proposed, give preference to those facilities that are located... on a corner Site”.
- [32] Although the subject property is located on an interior lot, it is also across the street from a park, and in close proximity to a school. Knottwood Road North NW is a major arterial road that abuts the proposed development. The Board accepts the Appellants’ submissions that the proposed daycare’s hours of operation for drop-off and pick-up will not overlap with those of the school across the street.
- [33] These factors mitigate the potential traffic and congestion issues that other Child Care Services on interior lots may face, and justify the waiver to the requirements under Section 80(8)(1)(a).
- [34] Although community consultation was not a requirement, the Board notes that there was significant community support from neighbours within the 60 metre notification area, further demonstrating that the proposed development is suitably located.

Section 80(8)(d)

- [35] Section 80(8)(d) states, in part, that “in a Residential Zone, outdoor play space may be allowed in any Yard, providing it is designed to limit any interference with other Uses, or the peaceful enjoyment of the properties of nearby residents, through fencing, landscaping, buffering and the placement of fixed play equipment”.
- [36] The Board finds that there is sufficient fencing surrounding the property. The walkway that abuts the subject property to the west, as well as the lane that abuts the property to the north and rear yard, also provide sufficient buffering from potential disturbances caused by the use of the outdoor play space. As such, the Board finds that the requirements under Section 80(8)(d) have been met.

Section 54.2(4)(a)(vi)

- [37] Section 54.2(4)(a)(vi) states, in part: “All required parking spaces shall be clear of any access driveways [and] aisles... and shall conform to the following minimum dimensions: ...aisles shall be a minimum of 7.0 m wide for 90° parking.”
- [38] The Board accepts the submissions of the Development Officer with respect to the three on-site drop-off spaces which are located within the required 7.0 m access aisle leading to the garage parking spaces.
- [39] However, the Appellant submitted that the vehicular parking within the garage will be restricted to employee-only parking. Employees will access the vehicular parking in the garage both prior to the drop-off period and after the pick-up period. As such, the on-site drop-off spaces will not interfere with the use of the vehicular parking spaces within the garage.
- [40] The Board weighed the submissions of both parties and finds that the proposed use of the vehicular parking spaces within the garage will not be impeded by the drop-off spaces located on the 7.0 m access aisle. The Board therefore waives the requirement under Section 54.2(4)(a)(vi).

Loading Space and Bicycle Parking Requirements

- [41] The Board finds that although one loading space is required, the information provided by the Appellant suggests that large loading trucks will not be used for the development. In addition, the Development Officer acknowledged in both her written and oral submissions that notwithstanding the requirement for a loading space, one may not be needed due to the scale of the development. As such, the Board waives the loading space requirements under Section 54.4(3)(a) and Schedule 3(2) to Section 54.4, subject to the condition that large loading trucks shall not be used in the operation of the Child Care Services at the subject site.

- [42] With respect to the bicycle parking requirements, the Board similarly finds that the scope of the development will not require dedicated bicycle parking spaces. The Board accepts the Appellants' submissions that the daycare children are unlikely to bike to the site. As such, the Board waives the bicycle parking space requirements under Schedule 2(1) to Section 54.3, subject to the condition that temporary bicycle storage shall be provided in the garage on an as-needed basis.
- [43] For the above reasons, the Board finds that granting the development and the necessary variances 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. As such, the appeal is allowed and the development is granted.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge, Ms. C. Chiasson, Ms. M. McCallum, Ms. E. Solez

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 5th 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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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.



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Date: May 5, 2016
Project Number: 180136682-001
File Number: SDAB-D-16-101

Notice of Decision

- [1] On April 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 23, 2016. The appeal concerned the decision of the Development Authority, issued on [enter date stated on permit], to [approve, refuse] the following development:

Change the Use of existing Single Detached Housing to a Child Care Services (43 children - 6, 0-11months/ 4, 12-18 months/ 10, 19 months-3yrs/ 4, 3-4.5yrs/ 4, 4.5-7yrs & 15 - school aged children) and to construct interior and exterior alterations (conversion of attached garage to in after-school-care removal of garage doors) [unedited from Development Permit refusal]

- [2] The subject property is on Plan 3100TR Blk 43 Lot 1, located at 4004 - 76 Street NW, within the RF1 Single Detached Residential Zone.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Appellant's grounds for appeal and written submissions, received March 23, 2016;
- Copy of the Development Permit application and refused permit, with attachments from Fire Rescue Services and Transportation Services;
- Copy of the Canada Post receipt confirming delivery of the development permit decision;
- Various emails exchanged between the applicant and the Development Officer;
- Development Officer's written submissions, dated April 11, 2016; and
- Two email letters and two online responses in opposition to the development.

Summary of Hearing

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

i) Position of the Appellant, Mr. K. Luthra

[6] Mr. Luthra was accompanied by Ms. B. Saint, the Facilities Manager for the proposed development.

[7] Mr. Luthra provided an overview of the surrounding area, stating that child care services are needed in the area, particularly as the daycare that is approximately two minutes away from the subject property has since been closed down. Millbourne Mall, which is approximately a two minute walk from the proposed development, has a daycare that is full and cannot accommodate additional children.

[8] Mr. Luthra stated that the subject property faces directly onto a major arterial road, 76 Street. There is also a bus stop within 60 metres of the site, and many of the parents, children and staff will rely on public transportation. The Millgate bus terminal is also approximately 92 metres away. The daycare's business model includes a mini-van that will pick-up children from their homes in the morning, then drop them off at home in the evening.

[9] When questioned by the Board, Mr. Luthra acknowledged that on-street parking is prohibited along 76 Street in front of the property. However, parking is permitted along the flanking side street.

[10] Due to the availability of public transportation and the proposed mini-van, Mr. Luthra submitted that four parking spaces are not actually needed for the development. However, he is prepared to extend the existing driveway so as to allow four parking spaces.

[11] When questioned by the Board as to whether he would be amenable to decreasing the number of children so as to meet parking requirements, he stated that that minor fluctuations by two or three may be possible, but due to the tight profit margins of running a daycare, they would not be able to drop below 40 children.

[12] Mr. Luthra also stated that he attempted a form of community consultation with the immediately adjacent neighbours; however, he was unable to reach the individuals.

ii) Position of the Development Officer, Ms. E. Peacock

[13] Ms. Peacock explained that three separate plans were submitted for the development application. The original plans did not identify any fencing. The second set of plans identified chain link fencing with slats. The proposed fencing did not completely enclose the outdoor play space. In addition, a variance would still be needed for the proposed six feet tall fence.

- [14] When questioned, Ms. Peacock noted that even if the six feet tall fence were granted, safety concerns remain due to the impact that the fence would have upon driver sightlines. She acknowledged that some of the safety concerns may be mitigated if the slats were removed from the chain fence, but the issue remains that a six feet tall chain link fence would not be characteristic of the neighbourhood.
- [15] The major concern with the development is the proposed plan to pave over a large portion of the front yard. The subject property is located in the low density, RF1 Single Detached Residential Zone. An expansion to the driveway to allow for four parking spaces will result in a front yard and property that is not characteristic of a residential neighbourhood.
- [16] The Development Officer referred to a Transportation Services memorandum, which stated that “Transportation Services **objects** to this development, based on the proposed on-site parking deficiency of 9 parking stalls (provided 3 stalls; required 12 stalls)”, and that “Drop off operations occurring on 40 Avenue will not be considered as this will increase congestion during peak hours and will exacerbate the existing on-street parking situation.”

iii) Rebuttal of the Appellant

- [17] The Appellant noted that the Development Officer’s report states that the corner lot property is a preferred location for a Child Care Services Use.
- [18] He stated his willingness to provide additional landscaping to address aesthetic concerns.

Decision

- [19] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [20] Child Care Services is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [21] The proposed development is deficient in a number of areas, as outlined in the Development Officer’s written submissions and refusal decision.
- [22] In particular, the Board finds that the proposed fencing would require a variance to the 1.85 metres maximum height requirement under Section 49(3), and that the location of this fencing could have an impact on driver sightlines, and therefore should be reviewed by Transportation Services.

- [23] In addition, Transportation Services objects to the development due to the lack of available on-street parking and existing congestion along 40 Avenue, as well as the restriction on on-street parking along 76 Street, a major arterial road that abuts the front of the property.
- [24] Due to these existing parking-related stresses within the neighbourhood, the Board is not convinced that the proposed on-site parking spaces – which remains deficient – will alleviate these pressures. In addition, the Board finds that the revised proposal to effectively pave the entire front lawn with concrete to allow for four parking spaces will result in an aesthetic that is not characteristic of the neighbourhood.
- [25] Further, while the Appellant attempted some community consultation, the Board notes that no evidence was provided by the Appellant with respect to community support for the development. By contrast, two email letters and two online responses were submitted in opposition to the development.
- [26] Ultimately, the Board was not convinced that the commercial and business-related reasons provided by the Appellant served as sufficient planning reasons as to why the development should be granted. As such, the Board finds that granting the development and the necessary variances will unduly interfere with the amenities of the neighbourhood, and will materially interfere with or affect the use and enjoyment of neighbouring parcels of land. The appeal is therefore denied and the development is refused.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge, Ms. C. Chiasson, Ms. M. McCallum, Ms. E. Solez

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.
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SDAB-D-16-062

An appeal to operate an Automotive/Minor Recreation Vehicle Sales/Rental and to relocate an existing mobile office (Peace Motors) located at 9115 / 9035 – 127 Avenue NW was **TABLED** to May 25 or 26, 2016.