

Edmonton Subdivision and Development Appeal Board

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Date: April 23, 2015
Project Number: 166188321-001
File Number: SDAB-D-15-070

Notice of Decision

This appeal dated March 16, 2015, from the decision of the Development Authority for permission to:

Change the Use from General Retail Stores to Health Services on the main floor, Commercial Schools with 150 students and Professional, Financial, and Office Support Services on the second floor, and to construct exterior alterations (adding windows)

on NE-5-52-24-4 and Plan 5711KS Blk A, located at 3110 - Calgary Trail NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 8, 2015. The decision of the Board was as follows:

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*, R.S.A 2000, c. M-26.

At the outset of the hearing the Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, Chapter M-26 which states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or 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.

The Board heard an appeal of the decision of the Development Authority to approve an application to change the Use from General Retail Stores to Health Services on the main floor, Commercial Schools with 150 students and Professional, Financial, and Office Support Services on the second floor, and to construct exterior alterations (adding windows), located at 3110 - Calgary Trail NW.

The subject site is zoned DC2.11 Site Specific Development Control Provision. The approved development permit application was appealed by an adjacent property owner.

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

- a. Photographs of the subject area submitted by the Appellant.
- b. A copy of the Development Authority's submission supporting the decision.

The Board heard from Ms. Walper, the Appellant, who made the following points:

1. She has been a resident in the area for three and a half years.
2. She conceded that the Development Authority followed the directions of City Council.
3. She was confused as what the direction of City Council was.
4. She is not opposed to the proposed development.
5. Her concern is that lighting from the proposed development will create a negative impact on her back yard.
6. After reviewing the DC2.11 Site Specific Development Control Provision, she stated that the direction of City Council may not have been followed and that Section DC2.11.1 is to ensure minimum negative visual and noise impacts on adjacent residential properties.

The Board then heard from Ms. Hamilton, representing the Sustainable Development Department, who made the following points:

1. She confirmed that she reviewed the development permit application against the *Edmonton Land Use Bylaw 5996*.
2. In her opinion, she followed the directions of City Council.
3. She may have referenced Section 51 of the *Edmonton Zoning Bylaw 12800* instead of Section 62 of the *Edmonton Land Use Bylaw 5996*, which was a clerical error in condition number three of her approval. However, the contents of both the aforementioned sections were the same.

In response to questions by the Board, Ms. Hamilton provided the following information:

1. With regard to parking, she stated that 106 parking spaces were required with the previous uses approved on the site and the current requirement is 69 parking spaces with the proposed uses on the site.
2. The proposed development does not have any windows that will face the residential neighbourhood to the west.
3. In her opinion, the proposed development will have less noise impact compared to a previous use on the subject site.
4. One parking space is required for every 10 seats for a commercial school.
5. Lighting is an enforcement issue and not an approval issue.

The Board then heard from Mr. Nystad, representing the Respondent, Tri-Stad Designs Ltd., who made the following points:

1. In his opinion, the Development Authority followed the directions of City Council.
2. The proposed development complies with the *Edmonton Zoning Bylaw 12800* and does not have any variances.
3. New lighting will be installed.

The Board then heard from Mr. Brocks, a neighbouring property owner, who made the following points:

1. He is in support of the proposed development and, in his opinion, the Development Authority followed the directions of City Council.

The Board then heard from Mr. Murray, the building contractor, who made the following points:

1. He reviewed the previous development and, in his opinion, the Development Authority followed the directions of City Council.

In rebuttal, Ms. Walper made the following points:

1. In her opinion, the noise and visual impact were not considered by the Development Authority.
2. Therefore, in her opinion, the Development Authority did not follow the directions of City Council.

DECISION:

That the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED.

The Development Authority's decision contained the following conditions:

1. No parking, loading, storage, trash collection, outdoor service or display area, shall be permitted within a required yard. Loading, storage, parking and trash collection areas shall be located to the sides of the principal building and shall be screened from view from any adjacent sites, public roadways or light rail transit lines in accordance with the provisions of *Section 69.3 of the Edmonton Land Use Bylaw 5996*.
2. No signs, antennae or objects of any other similar nature on any portion of any building shall be visible to a resident from the habitable ground floor area of any adjacent residential unit, the property line of which is within 33.53 m (110 ft.) of the portion of such building on which such objects, signs, antennae or object is located. (Reference Section DC2.11.4(h)(v)).

3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 62 of the *Edmonton Land Use Bylaw 5996*).

NOTES:

1. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
2. Signs require separate Development Applications.
3. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
4. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
5. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

REASONS FOR DECISION:

The Board finds the following:

1. Section 641(4) of the *Municipal Government Act*, Chapter M-26 which states “that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or 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.”
2. The proposed developments are Uses listed within the DC2.11 Site Specific Development Control Provision.

3. The Board finds that although the Development Authority added conditions from both the *Edmonton Land Use Bylaw 5996* and the *Edmonton Zoning Bylaw 12800* when approving the proposed development; the wording is the same and the proposed development complies with the DC2.11 District and the *Edmonton Land Use Bylaw 5996*.
4. Although the General Purpose of the Site Specific Development Control Provision pertains to minimization of noise and lighting on adjacent residential properties, the Board accepts the submission of the Development Authority that these are enforcement issues. Moreover, conditions number one and three of the approval address these issues.
5. Based on the evidence provided and pursuant to Section 641(4)(b) of the *Municipal Government Act*, the Board is satisfied that the Development Authority did follow the Directions of City Council. Accordingly, the Board finds that there is no valid basis for an appeal of that approval.

Important Information for 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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, R.S.A. 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.

Ms. P. Jones Presiding Officer
Subdivision and Development Appeal Board

CC: Andrea Walper
Torri Schols
Dion Brocks
Kelly Murray
Kevin Dickson
Jo Nicholas
City of Edmonton, Sustainable Development, Attn: Fiona Hamilton

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SDAB-D-15-071

Application No. 139511609-003

An appeal to construct exterior alterations to an existing Automotive and Minor Recreation Vehicle Sales/Rentals development (revise previously approved landscape plan to replace landscaping with fencing), on Plan 1428NY Blk 21 Lots 1, 2U, located at 8115 – 137 Avenue NW, was **TABLED TO APRIL 15, 2015**.