

Edmonton Subdivision and Development Appeal Board

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DATE: April 24, 2015
PROJECT NO.: 161993365-002
FILE NO.: SDAB-D-15-063

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

These appeals dated March 2 and March 3, 2015, from the decision of the Development Authority for permission to:

Demolish an existing Religious Assembly building and to construct a new Religious Assembly building - 86 seats (Salvation Army)

on Plan RN43 Blk 32 Lots 13, 14 and 15, located at 11661 - 95 Street NW, were heard by the Subdivision and Development Appeal Board at its hearing held on March 26, 2015 and April 9, 2015. The decision of the Board was as follows:

March 26, 2015 Hearing

SUMMARY OF HEARING:

At the outset of the appeal hearing, the Presiding Officer indicated that there was a preliminary matter to discuss. He stated that Ms. Agrios, Legal Counsel for the Appellant, the Alberta Avenue Community League, was not able to attend the hearing and is requesting a postponement to April 8 or 9, 2015.

Ms. Basualdo, representing the Alberta Avenue Community League (Appellant No.1), indicated that April 9, 2015 would be preferred.

Mr. Forget (Appellant No. 3), Mr. Fowler (Appellant No. 2), and Ms. McAleese (Appellant No. 4), the other Appellants, agreed to table the hearing to April 9, 2015.

Mr. Wakefield, Legal Counsel for the Respondent, The Salvation Army, agreed to table the hearing to April 9, 2015.

DECISION:

“that SDAB-D-15-063 be TABLED TO APRIL 9, 2015 at the written and verbal request of Legal Counsel for the Appellant, the Alberta Avenue Community League; in agreement with all of the Appellants; and in agreement with Legal Counsel for the Respondent.”

April 9, 2015 Hearing

MOTION:

“that SDAB-D-15-063 be raised from the table.”

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 appeals were filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard appeals of the decision of the Development Authority to approve with conditions and variances, an application to demolish an existing Religious Assembly building and to construct a new Religious Assembly building - 86 seats (Salvation Army), located at 11661 – 95 Street NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was appealed by the Alberta Avenue Community League and three affected property owners.

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

- Written submission from the Development Authority, dated March 20, 2015;
- Memorandum from Transportation Services, dated November 24, 2014;
- Three written submissions from Appellant No. 3, dated March 19, March 24, and April 7, 2015;
- Written submission from the Alberta Avenue Community League, dated March 23, 2015;
- Written submission from Appellant No. 2; dated April 6, 2015;
- Written submission from Legal Counsel for the Alberta Avenue Community League; dated April 2, 2015;
- Written submission from Legal Counsel for the Respondent, The Salvation Army dated April 2, 2015; and
- Several letters from neighbouring property owners dated March 9, 2015 to April 9, 2015.

The Board heard from Ms. Agrios, Legal Counsel for one of the Appellants, Alberta Avenue Community League, who submitted a further written submission, a Court of Appeal Case, marked Exhibit “A” and photographs, marked Exhibit “B”, “C”, and “D”, copies of which are on file. Ms. Agrios first addressed the jurisdictional issues related to this appeal on the assumption that the Board would deal with this matter before proceeding onto the merits. Ms. Agrios made the following points:

1. She clarified that all of the Appellants and area residents acknowledge the importance of the services provided by the Salvation Army. The only opposition to the proposed development is based on the proposed location and the suitability of the subject site because it is bordered on two sides by lots that are zoned RF3 Small Scale Infill Development Zone.
2. A Religious Assembly is a Discretionary Use in the RF3 Small Scale Infill Development Zone and is subject to the regulations contained in Section 71 of the *Edmonton Zoning Bylaw* as well as the requirements of the Mature Neighbourhood Overlay, Section 814 of the *Edmonton Zoning Bylaw*, both of which are contained in her written submission.
3. Her presentation is broken down into three parts, jurisdiction, the merits of the appeal and the proposed Discretionary Use.
4. Ms. Agrios referenced the definitions for Religious Assembly and Community Recreation Services contained in her written submission.
5. She stated that it is clear from the list of activities and services contained at Tab 4 of her written submission that the proposed development is much more than a Religious Assembly and more closely fits the definition of Community Recreation Services which is neither a Permitted nor Discretionary Use in the RF3 Zone.
6. She conceded that a Religious Assembly can engage in accessory social activities but that those activities must be related to the principle use which is worship.
7. An appeal from a similar development permit application that had been refused by the Development Authority was heard by the Subdivision and Development Appeal Board in October 2013 (“the Previous Board Decision”). The Board refused that appeal based on the finding that the proposed Use was Community Recreation Services, which is neither a Permitted nor Discretionary Use in the RF3 Zone.
8. It was her opinion that, even though the Board is not bound by precedent, it has to be consistent when interpreting the Use Class requirements of the *Edmonton Zoning Bylaw*.
9. She also advanced the argument that the Board is estopped in this matter because of the Previous Board Decision.
10. The Crossroads Church has operated from this location for a number of years but the building closed two years ago and has been operating temporarily from the Bethel Church site that is located approximately two blocks south of the subject site.
11. She referenced photographs of their temporary location marked Exhibit “D” and photographs of the Salvation Army van parked on the site marked Exhibit “B”.
12. The Salvation Army is currently using the basement of the Bethel Church to operate the Warming Shelter and Outreach Service. The van is used to bring people from outside the neighbourhood to the facility and for worship service held for two hours on Sunday.
13. She referenced information contained at Tab 9 of her written submission including social media postings, a list of agencies that provide a meal program, an application form from Homeward Trust and Registered Charity information to support her opinion that this type of information is usually associated with a social agency and is outside philanthropic activities for a Religious Assembly.
14. She referenced the letters of support contained in Tab 11 of the Respondent’s submission and noted that the letters were provided by other social agencies, including the Hope Mission. The letters did not reference prayer or worship but rather commended the Church for the services that they provide.

15. She argued that the approved variances will unduly interfere with the amenities of the neighbourhood and materially affect the use, enjoyment and value of neighbouring properties and therefore the proposed development does not meet the test contained in Section 687(3)(d)(i) of the *Municipal Government Act*.
16. It was her opinion that the Board should exercise discretion in this matter based on the fact that the proposed development is a Discretionary Use in this Zone and in her opinion not appropriate for this location.
17. The memorandum from Transportation Services dated November 24, 2014 indicates that their review of this application was primarily based on the previous application and that they did not object to the required parking variance based on the justification provided by the Salvation Army. The list of activities indicate that the site is primarily used for drop in, feeding and outreach services and only references one religious service for two hours on Sunday. For most of the time, the facility is not used as a Religious Assembly and therefore does not have to comply with the parking requirements for a Religious Assembly.
18. She noted that the description of the list of activities contained in Tab 4 of the Respondent's submission differs from other activity lists that she and the neighbours have seen.
19. A review of the development permit application and the plans indicate that the largest area of the building is labelled "worship/drop-in" area with no fixed seating. The kitchen is large, directly attached to the worship/drop-in area and is atypical of a Religious Assembly.
20. She reviewed the agenda and decision for the hearing held in October 2013 (contained in Tab 6 and 7 of her written submission) and reiterated her opinion that this application is virtually the same. Even though the Board is not bound by precedent it should be consistent when rendering decisions.
21. She referenced Exhibit "A", a decision from the Court of Appeal of Alberta, *Sihota v Edmonton (City)*, 2013 ABCA 43, specifically page 5, paragraph 14 which states that "the issue here is not whether the SDAB is bound by its previous decisions, nor whether it is bound by the decisions of the development officer. Issue estoppel does not arise because the prior decision is "binding on the tribunal, although that is the effect. Issue estoppel means the prior decision is "binding on the parties"; issue estoppel prevents them from re-litigating what has already been decided. So the issue is whether the municipality and the developer are bound by the previous decisions relating to the use of the subject land."
22. Page 6, paragraph 19 of that decision states that "In its factum the SDAB noted that if an issue estoppel was recognized, then "in at least some cases, the result will be that an error made by the development authority in respect of the original development permit will be repeated in respect of the new development permit". That is one way of characterizing the consequences, but it overlooks the fact that issue estoppel is designed to bring certainty and finality. It prevents the re-litigation of issues, which always involves an argument that a previous decision was "wrong"."
23. She reiterated her opinion that the proposed Use is Community Recreation Services, which is neither a Permitted nor Discretionary Use in the RF3 Zone and the only other option is that the subject site be rezoned to accommodate this Use.

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

1. The use of the building for drop-in prayer was used to justify the required parking variance.
2. It is sufficient for the Board to find that the proposed development is not a Religious Assembly.
3. The Previous Board Decision found that the proposed Use was Community Recreation Services.
4. The proposed development does not fit the definition of any of the other Discretionary Uses listed in the RF3 Zone.
5. Although there is some concern regarding the list of activities for the subject site, the plans labelled a large part of the main floor as a “worship/drop-in” area with no fixed seating and a large kitchen that is directly accessible from this part of the building.
6. The parking variance was granted based on the information provided to Transportation Services that a religious service was only offered one day per week.
7. It was her opinion that the Board is estopped from making a decision that is different from the Previous Board Decision.
8. The Board has to be consistent when interpreting the requirements of the *Edmonton Zoning Bylaw* and would have to determine that this development application is different from the previously refused application.

Ms. Agrios asked the Board to rule on the jurisdictional issues before proceeding to the merits of the appeal.

The Board then heard from Mr. Wakefield, Legal Counsel for The Salvation Army. Mr. Wakefield provided the following information:

1. He urged the Board to deal with both the jurisdiction issues and merits of the appeal based on a recent appearance at the Alberta Court of Appeal on April 1, 2015. The Court questioned the reasoning of the Board not to hear jurisdictional arguments as well as the merits of an appeal so that, in the event of a reversal on the jurisdiction arguments the Court is in a position to also rule on other aspects of the appeal without having to first send the matter back to the Board to be heard on the merits.
2. An erroneous decision on jurisdiction alone could lead to a lengthy and unnecessary delay in obtaining a ruling on the application.
3. This was a live issue before the Court of Appeal and it was his opinion that the Board should not restrict itself to jurisdiction but should deal with the merits of the appeal at the same time.

The Board then heard from Mr. McClellan and Mr. Welch, representing the Sustainable Development Department, on the issue of jurisdiction who made the following points:

1. Upon a review of the information submitted with the development permit application, Mr. McClellan determined that the proposed development fell within the definition of a Religious Assembly.
2. The Salvation Army is a longstanding religious organization and the proposed activities are included in the definition of a Religious Assembly contained in the *Edmonton Zoning Bylaw*.

3. The definition of Religious Assembly does not mandate the number of hours or the frequency of worship and related activities required.
4. One religious service on a Sunday is not atypical of other churches in the City and the definition does not prescribe the intensity or duration of the accessory activities.
5. The proposed development is not Community Recreation Services.
6. The Sustainable Development Department does not want to mandate how Religious Assemblies conduct their activities.

They provided the following responses to questions:

1. The Salvation Army submitted additional information with this application, specifically their Mission Statement and a more detailed list of the proposed activities that was not provided with the previous application. Therefore, the proposed development was reviewed as a new application.
2. Some minor revisions were made to the plans, including a reduction in the size of the kitchen.
3. A pre-application meeting was held with the Architect and representatives of the Salvation Army to review the proposed plans and discuss the concerns of the neighbourhood that were raised at the previous SDAB hearing.
4. The decision was made to accept a new development permit application based on the list of activities and the clear religious component.
5. The application was reviewed and approved as a Religious Assembly, which in their opinion, was the most accurate Use Class.

Ms. Agrios made the following comments in response to the jurisdictional arguments raised by Mr. Wakefield:

1. It has always been the practice of the Board and many other Boards in the Province to deal with jurisdictional issues first before proceeding to the merits of an appeal.
2. In her experience, the Court of Appeal has never expressed a concern about the possibility of a second hearing.
3. She is not able to comment on the evidence provided by Mr. Wakefield because the decision of the Court of Appeal has not been rendered.
4. It was her opinion that there is no need for the Board to deviate from their usual practice.

Ms. Agrios provided the following responses to questions:

1. It was her opinion that dealing with the jurisdictional issue first is the most efficient process because it will shorten the length of the hearing and eliminate the need to hear irrelevant evidence if the Board determines that it does not have jurisdiction to proceed to the merits of the appeal.
2. It is the typical practice of the Court of Appeal to send matters back if it is determined that the Board erred by not assuming jurisdiction.

After a short recess, the Board reconvened and the Presiding Officer indicated that it was the decision of the Board that it would be premature to rule on the jurisdictional issue before hearing the merits of the appeal.

The Board then heard from Ms. Agrios who provided the following information:

1. She referenced the 7 variances granted for the proposed development.
2. The footprint of the proposed building is 2/3 larger than the existing building on the subject site, which results in deficiencies in the landscaping requirements.
3. A large variance has been granted to the minimum required number of parking spaces.
4. She referenced the General Purpose of the RF3 Small Scale Infill Development Zone that is to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to building containing up to four Dwellings, and including Secondary Suites under certain conditions.
5. It was her opinion that the required number of variances to allow a larger building on this site is not in keeping with the General Purpose of this Zone.
6. She referenced the development regulations for a Religious Assembly contained at Tab 11 of her written submission.
7. Section 71.3 regulates the size of a Religious Assembly that is located within 60 metres of a Site zoned to allow Single Detached Housing to ensure that it is characteristic of the surrounding low-density development.
8. The proposed Religious Assembly should comply with the Site Coverage and Setback requirements because it is surrounded on three sides by low-density housing.
9. The General Purpose of the Mature Neighbourhood Overlay is to ensure that new low density development in mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape.
10. It was her opinion that the proposed development is not similar in scale to existing development and based on the number of required variances is not suitable for the subject site.
11. She referenced photographs marked Exhibit "C" and "D" to illustrate the existing mature neighbourhood with large trees, older houses with large trees and mature landscaping.
12. The proposed building is large, covers more than half of the lot and will have minimal landscaping which is not characteristic of the area.
13. The required parking has been reduced from 22 spaces to 6 spaces. This is a significant variance that has been granted without significant reason.
14. She referenced photographs to illustrate that street parking is limited during the daytime hours even though the Salvation Army is not currently operating from the subject site.
15. The proposed new building will exacerbate the ongoing problem with on-street parking.
16. The Salvation Army van will occupy at least one of the proposed on-site parking spaces.
17. Transportation Services did not object to the required variance in on-site parking based on the information provided by the Salvation Army that an adjacent property owner has agreed to let them use 53 parking spaces on their property. However, a formal written agreement was not provided or imposed as a condition of the approval.
18. Even if the Board determines that the proposed development is a Religious Assembly the suitability of the proposed use for this location must be determined.
19. It was her opinion that the site is not suitable because it is surrounded by residential development, primarily single detached houses.
20. Based on past use of the site, the new proposed building will significantly increase pedestrian and vehicular traffic to a level that is not characteristic of an RF3 neighbourhood.

21. Activities will occur at this site every day of the week, not just on Sundays.
22. A petition in opposition to the proposed development has been submitted. The petition contains the signatures of more than 150 individuals who reside within a three-block radius of the subject site. Numerous letters of opposition were submitted by other residents of this neighbourhood.
23. She referenced the community feedback contained in Tab 10 of the Respondent's submission and noted that the information provided to the community did not address the required variances, specifically the parking variance or the proposed ancillary uses.
24. The letters of support were provided by individuals who do not reside in this neighbourhood.
25. Community opposition to the proposed development is overwhelming based on their past experiences with the negative impact of this facility on the use and enjoyment of their properties.
26. Although there is a need for this type of facility, it would be more appropriately located in a commercial zone.

Ms. Agrios provided the following responses to questions:

1. The residents have found that the problems have moved from the subject site since the Salvation Army temporarily relocated to the basement of the Bethel Church.

The Board then heard from the three additional Appellants, Mr. Robert Fowler, Mr. and Mrs. McAleese and Mr. Forget who outlined the following concerns:

1. They all live in close proximity to the subject site.
2. The activities offered by the Salvation Army on the subject site, including the drop-in centre, soup kitchen and warming facility have negatively impacted their quality of life by bringing at-risk individuals and the associated problems into their neighbourhood.
3. The Salvation Army has not shown any respect for the neighbourhood or addressed their concerns.
4. On site security is not provided and the site is not well maintained.
5. They have all noted a decrease in problems since the Salvation Army moved to the Bethel Church site.
6. There is only one religious service held at this location on Sundays.
7. The Salvation Army did not consult with the neighbours and was not forthcoming about the scope of the proposed development and the variances required.
8. The variance granted in the required number of on-site parking spaces will increase the existing problem with on-street parking.
9. The proposed development could negatively impact the ongoing neighbourhood revitalization program.

The Board then heard from Ms. Basualdo, Civics Director for the Alberta Avenue Community League, who provided the following information:

1. The Community League has made several attempts to address the ongoing problems with the Salvation Army without success.

2. The problems have decreased since the Salvation Army has moved to the Bethel Church site, but the offered services have been reduced.
3. It was her opinion that the Salvation Army was not forthcoming with information regarding the services planned for the new facility.
4. The Community League never met with the Sustainable Development Department but did provide a letter outlining their concerns after they received notice that the development had been approved.
5. The Community League has met with the Architect and representatives of the Salvation Army to discuss the proposed development.

The Board then heard from Ms. Joanne Coleman, an affected property owner who outlined the following concerns:

1. The services offered by the Salvation Army bring undesirable individuals into the neighbourhood that result in illicit activities.
2. She used several photographs to illustrate the impact of the development on the use and enjoyment of her property.
3. Ms. Coleman has built a 6-foot fence to secure their property.
4. On-street parking is a problem in this neighbourhood especially on Sunday when religious services are held.

Mr. McClellan, the Development Officer, provided the following information regarding the merits of the appeal in response to questions from the Board:

1. He did not reference the Previous Board Decision when making his decision but he was aware of the history of the site and that it had previously come to a hearing of the Subdivision and Development Appeal Board.
2. In his opinion, the problems associated with the existing building, that will be demolished, are addressed through the design of the proposed new building.
3. The development regulations contained in the *Edmonton Zoning Bylaw* have not been amended since the previous appeal hearing.
4. The Salvation Army did undertake some community consultation but it was noted that community consultation is only a requirement if variances to the Mature Neighbourhood Overlay are required.
5. Pre-application consultation is a service that is offered by the Sustainable Development Department primarily for commercial or industrial developments.
6. The Salvation Army provided additional information with this development permit application in response to the concerns of the community and the Development Officer who reviewed the previous development permit application.

At this point Mr. Wakefield, Legal Counsel for The Salvation Army allowed Mr. Lyle Donald to address the Board in support of the proposed development. Mr. Donald provided the following information:

1. He is the former President of the Metis Nation of Alberta and serves on the Metis Regional Council but has no association with the Salvation Army.

2. The Native Friendship Centre is located in close proximity to the subject site.
3. The Salvation Army is committed and provides assistance to many Aboriginals who live in this area.
4. The variance granted in the number of parking spaces is not a concern for the homeless individuals who access the services offered by the Salvation Army.
5. It was his opinion that all churches experience similar parking problems.

The Board then heard from Mr. Kim Wakefield, Legal Counsel for the Salvation Army who advised that Ms. Manasc, Architect for the project and several representatives of the Salvation Army will address the Board first.

Ms. Manasc used a PowerPoint presentation (that was originally submitted April 2, 2015 by Legal Counsel for the Respondent) to provide the following information:

1. The building was designed in consultation with the Salvation Army and the community focusing on the Christian purpose of the Salvation Army.
2. The new building is less than 5,000 square feet in size and is residentially scaled to fit into the context of the existing neighbourhood.
3. The new building is a single-storey and designed to provide easy access for all individuals.
4. The one storey building covers more of the site minimizing the size of the yard and reducing areas where inappropriate activities could occur.
5. This was done intentionally to address some of the community concerns.
6. The Crime Prevention Through Environmental Design (CPTED) principles were applied to ensure that there are eyes on the street and natural surveillance in response to concerns raised by the community during the first review of the project.
7. This facility is intended for the use of the neighbourhood and the reduction in the number of on-site parking spaces is justified because the majority of the congregation walks or uses public transit.
8. The Salvation Army van will be parked in one of the parking spaces and the other spaces will be used primarily by staff.
9. The building has a large area without fixed seating that was designed to provide flexible space.
10. The kitchen was designed to provide meals after church but was not designed to be an industrial or commercial kitchen.
11. She understood this development to be a small-scale community church designed for the use of neighbourhood residents and to address the sense of community.
12. A number of meetings were held with the Community League and other residents and the conversations are ongoing.

Ms. Manasc provided the following responses to questions:

1. She could not provide any information regarding the number of weddings that would be held in the building.
2. The Building has been designed to provide space for large and small group prayer for a maximum of 86 people.
3. Flexibility is important because construction is expensive.

4. Minor changes were made to the plan that was refused in 2013, including a reduction in the size of the kitchen.
5. The yards around the building were reduced to address the neighbourhood concerns.
6. It was her opinion that the proposed development does not require additional parking spaces.
7. The CPTED strategies were addressed by providing natural access control, natural surveillance or eyes-on-the-street, additional lighting and the use of building materials that are durable and easy to clean and repair.
8. Additional lighting could be installed in the proposed roof overhang on the north side of the building.
9. Security cameras will be installed at the entrances and along the north side of the building.
10. Monitoring is an operational issue that will be handled by the Salvation Army.
11. It was her opinion that the proposed development is appropriate in this mixed-use neighbourhood.

The Board then heard from Mr. Grant Effer, Ms. Danielle Strickland, Mr. Andrew Benson and Mr. James McIntyre, representing the Salvation Army. They provided the following information in support of the proposed development:

1. Mr. Effer referenced the Mission Statement of the Salvation Army contained in Tab 3 of the written submission.
2. The Salvation Army is an international Christian Church. Its message is based on the Bible; its ministry is motivated by love for God and the needs of humanity.
3. Worship is a lifestyle and more than a building and the Crossroads Church provides worship 24/7 whether it be serving coffee or providing a meal to someone in need.
4. The church is people, not a building and it is not restricted to 2 hours on a Sunday.
5. They have offered all sorts of communication in an attempt to partner with the community to address their concerns and rebuild this neighbourhood.
6. The list of activities contained in their written submission is accurate but programming does change based on need.
7. Mr. Effer considers all of the activities that occur on this site as worship.
8. Ms. Strickland has served as co-pastor of Crossroads Church for the last 5 years.
9. As co-pastor, it is her assignment to lead a community church.
10. She has worked in church planning in marginalized communities for many years and has never experienced this level of community opposition.
11. Some of their practices have been changed in a response to the community concerns, including church leaders moving into the neighbourhood.
12. The budget is small and they rely on volunteers.
13. The van is operated with the help of volunteers and is used to help women in distress and transport individuals to a safe place.
14. The new building will provide a space that is safe for single mothers with small children.
15. The Salvation Army also operates institutions but there is a distinct difference between a church and an institution.
16. Institutions operated by the Salvation Army are administered and operated by Social Service Officers, not Pastors who are responsible for Church activities, and the Salvation Army clearly distinguishes these roles.

17. The Church has a long history at this location and is prepared to reduce their activities, including the elimination of the Winter Warming Program in an attempt to address concerns.
18. They often refer individuals to other agencies or organizations.
19. They do try to address the problems with security but operate on a shoe-string budget.
20. Crossroads Church was started 17 years ago but has not operated from this site for the past 2 years.
21. It was Ms. Strickland's opinion that the design of the new building is part of the solution because of the reduced yards, improved lighting, and the installation of security cameras.
22. They will not be serving meals to 150 people twice a day.
23. The building is closed overnight.
24. There are usually two co-pastors and two part-time staff in the building when it is open.
25. There are six City employees on site when the Winter Warming Centre is in operation.
26. The staffing ratio will not change in the new building.
27. The current congregation is approximately 50 people.
28. Mr. Benson lives in the neighbourhood and leads the Winter Warming Centre.
29. The Centre is open Monday to Saturday, 7:00 a.m. to 3:00 p.m.
30. Bible study and prayer is offered every day before lunch. Lunch is usually soup and a sandwich.
31. The problems in this neighbourhood are not limited to the Salvation Army site.
32. More than half of the people who attend Crossroads Church live in the neighbourhood and are on a fixed income.
33. Mr. Jim McIntyre is a resident of the Alberta Avenue Community.
34. He was able to overcome his problems with the assistance of the Salvation Army.
35. He is now an Officer with the Church and manages the building and the site.
36. Mr. McIntyre has access to the police through a direct telephone number and can call if any problems arise at the site that require police assistance.
37. Every attempt is made to maintain the site but it is an ongoing problem.

The Board then heard from Ms. Courtney Redden, Ms. Taylor, and Ms. McIntyre who appeared in support of the proposed development and provided the following information:

1. They all live in the community and have never experienced any problems as a result of the activities occurring at this location.
2. Ms. Redden uses the bus stop in front of the Church and was not aware that the Winter Warming Program was operating from that location.
3. Ms. Taylor has attended the Crossroads Church for the past five years and moved into this neighbourhood two years ago. She walks to church and also volunteers at the Church.
4. Ms. McIntyre has been active in the Church for the past six years, volunteers and works for the Winter Warming Centre.
5. The Salvation Army has helped change her life.
6. They all agreed that the proposed development will address a need and will impact their neighbourhood in a positive way.

The Board then heard from Mr. Wakefield who provided the following information:

1. He referred to Tab 2 of his written submission that included a copy of the property tax notice for the subject site indicating that the property use is religious Worship and that it is exempt from all levies.
2. He referenced Tab 9 of the Appellant's submission to illustrate than many other churches in the City of Edmonton offer meal programs.
3. Tab 1 of his submission contains the definition of a Religious Assembly, pursuant to Section 7.8(13) of the *Edmonton Zoning Bylaw* as follows: "Religious Assembly means development used for worship and related religious, philanthropic or social activities and includes Accessory rectories, manses, meeting rooms, food preparation and service facilities, classrooms, dormitories and other buildings. Typical uses include churches, chapels, mosques, temples, synagogues, parish halls, convents and monasteries. This Use Class does not include Private Education Services, Public Education Services, and Commercial Schools, even as Accessory Uses".
4. A Church is not a narrowly defined concept and has some form or application of religious principles to the community in which it exists, in order to address social problems, and to help under privileged individuals.
5. The proposed development is a Religious Assembly.
6. Bethel Chapel is located two blocks away and offers the same programs and activities.
7. The Court of Appeal decisions provided by Ms. Agrios to support her estoppel argument all deal with legal non-conforming uses.
8. When an appeal of a refused development application for this site came to the Board in 2013 the Previous Board Decision was based on the very limited information that was provided. It was his opinion that the Board is not stuck with that decision.
9. Section 18 of the *Edmonton Zoning Bylaw* states that an application for a development permit within the same Use class shall not be accepted within 6 months of the date of refusal.
10. In this instance there has been a cooling off period of 18 months.
11. The *Edmonton Zoning Bylaw* contemplates that there can be a resubmission of a development permit application for a similar development and that it does not have to be a brand new proposal.
12. He agreed that consistency is important but that it is possible for this Board to render a different decision based on the provision of additional information.
13. The Board also has to be correct in its decision and consistency should yield to a more accurate interpretation of the definition of a Religious Assembly.
14. It was apparent during the design process that variances would be required but the decision was made to design a building to address the needs of the Salvation Army in an attempt to resolve some of the neighbourhood concerns.
15. Wrap around windows will be installed at the front and rear corners of the building.
16. Parking will only be a problem for several hours a week.
17. The owner of the lot across the street from the subject site has agreed to let the Salvation Army use their parking spaces.
18. The Board can also impose a condition on the approval if a more formal written agreement is required.
19. The variances are justified based on the fact that 95 Street is an urban street with CB2 Zoning located north of the site along 118 Avenue.

20. The subject site is located on the fringe of the RF3 Zone as illustrated on the map contained at Tab 6 of the Appellant's submission.
21. He referenced the community support contained in Tab 9 and 10 of his written submission and the map in Tab 12 to illustrate that the location of these responses are within 60 and 100 metres of the site.
22. The list of activities contained in Tab 4 makes it clear that the Salvation Army is trying to evolve with the community.
23. The van is an innovation that makes it possible for the Church to travel to the problems.
24. It was his opinion that the Church should be praised, assisted, and supported.
25. There is a homeless problem throughout the entire City, not just in this neighbourhood.
26. The Salvation Army has made every attempt to design a building and revise their programs to address the concerns of the neighbourhood.
27. The Board is not estopped from making a different decision than a previous panel of the Subdivision and Development Appeal Board.
28. The Salvation Army is amenable to any conditions that may be imposed by the Board.

Ms. Agrios provided the following information in rebuttal:

1. The information submitted with this application is basically the same as the previous application and the Architect confirmed that the changes to the plans are minor.
2. This is essentially the same application that was before the Board 18 months ago.
3. That refused application came to the Board and the Salvation Army had an opportunity to provide more information and explain the development.
4. The Previous Board Decision determined that the proposed Use was not a Religious Assembly and it was her opinion that it would be an error for this Board to find otherwise.
5. The six month waiting period is appropriate if dealing with minor variances and there may be a change in circumstance that would allow for a reapplication but this case deals with the interpretation of a Use Class.
6. Community Recreation Services is not an allowable Use in the RF3 Zone.
7. The only way to have that Use approved would be to rezone the site to accommodate that Use.
8. The Use is not non-conforming because the Use was discontinued for longer than six months.
9. The proposed six on-site parking spaces may not even accommodate staff during the winter months.
10. Once the Use is approved it stays with the land.
11. Based on the evidence provided, 50 percent of the people using this facility come from outside the community.
12. This neighbourhood is comprised primarily of single family houses.
13. The neighbourhood residents are not concerned about the use of the building for worship or prayer groups but safety becomes a concern because of the other services that are offered.
14. Designing a larger building with smaller yards will not eliminate the problems.
15. She referenced Tab 9 of her written submission and the fundraising information provided that the Salvation Army would be feeding 150 people twice a day from their new facility.
16. She expressed concern that the description of the services to be offered changes depending on the audience.
17. Meal programs offered by other churches are on a much smaller scale.

18. She conceded that there is a need for this type of service but the subject site is not an appropriate location.
19. The definition of Religious Assembly draws a distinction between worship and the other ancillary uses and all of the activities need to be related to worship.
20. Having access to a police hot line is not something that is typically associated with a Religious Assembly.
21. The Winter Warming Centre has more City of Edmonton employees than Church employees, which demonstrates that this is a community service that is not associated with worship.
22. Conflicting evidence has been provided about the use of the building but it was her opinion that the best evidence is the proposed plans.

Mr. Forget, one of the Appellants, attempted to introduce new evidence to which Mr. Wakefield objected. The Presiding Officer closed the hearing at this point.

DECISION:

“that the appeals be ALLOWED and the development REFUSED.

REASONS FOR DECISION:

The Board finds the following:

1. Regarding the Appellants contention that the Board is estopped from considering this appeal because of the Previous Board Decision rendered in October, 2013, the Board finds the following:
 - a) The Previous Board Decision upheld the refusal of the development permit and created no rights or restrictions other than preventing re-application for a limited time period.
 - b) Section 18.1(b) of the *Edmonton Zoning Bylaw* specifically allows re-submission after a minimum six-month waiting period following the refusal of a development permit and further allows such re-submission by the same or any other applicant for the same site.
 - c) A period of about 18 months has elapsed since the Previous Board Decision.
 - d) Since the *Edmonton Zoning Bylaw* allows re-submission after six months, the doctrine of estoppel cannot apply to this appeal.
 - e) Accordingly, the Board has the authority to hear this as a new appeal.
2. The principal issue before the Board is the appropriate Use classification for the proposed development.
3. The Board acknowledges the Respondent’s contention that the appropriate Use classification is Religious Assembly, the key concept of which is a building used for worship and related activities. The Respondents point out that under the Mission of the Salvation Army, the provision of food and shelter for those in need is a major part of how they worship. However, the Board is unable to accept that Religious Assembly is the appropriate Use classification for the following reasons:
 - a) While Religious Assembly is a Discretionary Use in the RF3 Zone, the proposed development exceeds the maximum 40 percent Site Coverage requirement stipulated in the Zone and the Setback requirements stipulated in Section 814 of the *Edmonton Zoning*

- Bylaw.* Accordingly, the proposed development is inappropriately located in the RF3 Small Scale Infill Development Zone within the Mature Neighbourhood Overlay.
- b) The configuration of what is designated as the Worship/Drop-in area with moveable seating and large abutting kitchen is clearly designed to serve the needs of those who drop-in, not for worship, but for food, shelter and support offered from 7:00 am to 3:00 pm, six days a week, six months of the year, the largest amount of time of any activity on the schedule.
 - c) The Board notes that this Winter Warming Outreach Program is actually staffed by six people who are employees of the City of Edmonton, not the Salvation Army. As noted by the Appellants, the scale of the drop-in program would serve as a magnet to bring elements and negative impacts into this residential community and the Salvation Army lacks the resources required to monitor and control activities that occur outside the hours of operation after city employees have left the building. As such, the Board finds that the scope of this outreach program falls well outside the “related religious, philanthropic or social activities” contemplated in the definition of the Religious Assembly Use.
 - d) Section 7.8(1) of the *Edmonton Zoning Bylaw* defines Community Recreation Services as development used for recreational, social, arts, or multi-purpose Use in a building without fixed seats and an occupancy capacity of fewer than 500 persons, primarily intended for local community purposes. Typical Uses include community halls, community centres, and community league buildings operated by a local residents' organization.
4. Based on the evidence heard, and the reasons provided in the previous paragraph, the Board deems that the principal Use of the proposed development is properly classified as a Community Recreation Services Use pursuant to Clause 7.8(1) of the *Edmonton Zoning Bylaw*.
 5. Section 687(3)(d)(ii) of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26, states “in determining an appeal, the subdivision and development appeal board 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, the proposed development conforms with the use prescribed for that land or building in the land use bylaw.”
 6. Community Recreation Services Use is neither a Permitted nor a Discretionary Use in the RF3 Small Scale Infill Development Zone.
 7. Pursuant to Section 687(3)(d)(ii) of the *Municipal Government Act*, the Board cannot approve the proposed development because it does not conform with the use prescribed for that land or building in the land use bylaw.

Important Information for 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*, 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.

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.

Mr. N. Somerville, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.