

Edmonton Subdivision and Development Appeal Board

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Date: December 17, 2015
Project Number: 180713836-001
File Number: SDAB-D-15-284

Notice of Decision

This appeal dated November 9, 2015, from the decision of the Development Authority for permission to:

Change the Use of a General Retail Store to a Pawn Store and to construct interior alterations

On Plan 7242AH Blk 2 Lots 23-24, located at 4603 - 118 Avenue NW, was heard by the Subdivision and Development Appeal Board on December 2, 2015.

Summary of Hearing:

At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The subject site is zoned CB1 Low Intensity Business Zone.

The development permit application was refused for the following reasons:

1. It was the opinion of the Development Authority that the proposed Use would unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring properties; and
2. The proposed development does not conform to the policies of the applicable Statutory
3. Plan, specifically the Abottsfeld Rundle Heights Community Development Plan.

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

- Written submissions from the Appellant, received Nov 27, 2015;
- Written submissions from the Development Officer, received Nov 12, 2015;
- 4 letters from neighbouring businesses in opposition to the development, included as attachments to an email dated Nov 26, 2015;
- 1 letter of opposition from the Beacon Heights Community League, received Nov 27, 2015;

- 2 letters of opposition from neighbouring businesses, received Nov 27, 2015;
- 1 letter of opposition from the Beverly Business Association, representing 4 neighbouring businesses, received Dec 1, 2015;
- 1 letter of opposition from 2 Beverly Community residents living at the same address, received Dec 1, 2015;
- 2 online responses in opposition to the development; and
- Copy of the Abbotsfield Rundle Heights Community Development Plan.

The Board heard from Ms. Holly Juska, legal counsel for the Appellant, who provided the following information:

1. The business now operates at 3908 – 118 Avenue. It is a growing business and the current location is too small, so they have purchased the subject property which is seven blocks away. They would like to make interior alterations and request a change in Use.
2. They are aware of the Overlay and that pawn stores are a Discretionary Use.
3. They have contacted the neighbouring area and the community league, and are prepared to address their concerns.
4. The existence of the Overlay and the fact that pawn stores are a Discretionary Use does not mean that pawn shop developments cannot proceed, but simply that there are additional regulations.
5. They understand that one of the purposes of the Overlay and the Development Plan is to prevent proliferation and to address any concerns raised by affected parties.
6. The proposed development does not represent a proliferation of pawn stores since they are simply moving their business from one location to another.
7. Since they were unable to attend the Business Revitalization Zone meeting, they are unaware of any business concerns.
8. They received a few positive comments about developing the vacant building and cleaning up garbage from the property. They also received positive feedback from the Metis Association.
9. They received one negative comment about garbage being strewn around and they have addressed that concern.
10. They are aware of the stigma surrounding pawn shops.
11. In 1986, there were more pawn shops than there are now.
12. Since then, the number of pawn shops have reduced from four to two.
13. The Development Plan's goals regarding economic development and assisting economically viable businesses in the area support this development application, as they wish to be good business neighbours.
14. The proposed development also aligns with the land use provisions of the Development Plan, in that the proposed pawn shop will redevelop vacant lands, which is viewed positively in the Development Plan.
15. They are owners of this property and they have an interest in developing a good business.

Ms. Juska provided the following responses to questions from the Board:

1. If not approved, her clients will have to sell the business, or start over with some other business.
2. If they sold electronics or other non-pawn items so that they could operate in the new location as a General Retail Use, they would have to change the business because they are not large enough to operate two businesses. There is one family member and one employee who helps out at the store.
3. They are aware that the permit remains with the property.
4. They are tenants at the old location, and have no control over the location and what happens after they leave, but the Use would not necessarily have to be pawn shop.
5. They believe there are two pawn stores in the area, including theirs.
6. Ms. Juska stated that the Abbotsfield Rundle Heights Community Development Development Plan is a guiding document and not necessarily binding upon the Board.

The Board heard from Mr. Mitchel Zohner, supporting the Appellant, who provided the following information:

1. He is running the store in place of his father, who recently passed away.
2. He is unsure of the Landlord's intent once the pawn store moves to the new location.
3. He has no intention to open a second store in the community.
4. The store receives approximately 50 visitors per day, and he anticipates up to an unlimited number as the business grows.
5. He wants to work with businesses in the surrounding area. He believes that as his business grows and more customers visit his store, neighbouring businesses will also receive more customers.
6. He is aware of the surrounding commercial properties and the types of businesses in the area. He is also aware of the apartments across the street, the six parking lots and loading zone to the rear of the subject property, and the single family homes to the south.
7. As a family business, he wants to prosper in the neighbourhood.

The Board heard from the Appellant, Mr. Carla Zohner, who provided the following information:

1. Pawn shops are not being open as much now as in the past
2. Several pawn shops have closed in recent years, and when those properties were re-rented, they were upgraded to other businesses, such as a hair salon.

The Board heard from, Ms. Erica Peacock, Development Officer from the City of Edmonton Sustainable Development, who provided the following information:

1. The proposed development involves a change in Use in a CB1 Low Intensity Business Zone. Pawn shops are a Discretionary Use in this zone.
2. Section 11.2(6) of the *Edmonton Zoning Bylaw* states:

The Development Officer shall receive all applications for development and... may refuse or approve, with or without conditions, with or without changes in the design of the development, or with or without the imposition of regulations more restrictive than those required by the

specific Zone or General Development Regulations of this Bylaw, an application for development of a Discretionary Use, *having regard to the regulations of this Bylaw and the provisions of any applicable Statutory Plan*; [emphasis added]

3. Section 6.1(96) states:

Statutory Plan means for the purpose of this Bylaw only, any plan defined as a Statutory Plan by the Municipal Government Act, or any planning policy document approved by City Council by resolution having specific impact on a defined geographic area such as a neighbourhood.

4. Due to the wording of Sections 11.2(6) and 6.1(96), the Development Authority considers the Abbotsfield Rundle Heights Community Development Plan a Statutory Plan, since it was adopted by City Council by resolution.
5. Although Sustainable Development is required to give weight to the Development Plan, she acknowledged that the Board may take a different position.
6. The proposed development did not raise any development issues or variance concerns.
7. Since the Use is discretionary, the development was refused because of the fit within the community and also because of the weight they gave to the Statutory Plan.
8. Although the Development Plan was developed some time ago, it provides directions regarding how the area will be developed in the future.

In response to questions, Ms. Peacock provided the following information:

1. The Development Plan was passed by City Council, but is not considered a Statutory Plan under the *Municipal Government Act* definition.
2. Community Development Plans are policy documents for area redevelopment, and they were trying to align the proposed business with this document.
3. Relocation is not a proliferation as they are moving the same business from one location to another; however, the Use resides with the land.
4. They have support from the Metis Regional Council.
5. She referenced Exhibit "B", which showed the number of Pawn Shops along 118 Avenue. Within the Beverly Heights area, there is one other pawn shop along with the one presently being considered. However, along the total length, there were 13 pawn shops.
6. When asked whether there had been any complaints or issues regarding this pawn shop, she indicated that there have not been any.
7. She said that the Overlay was developed because there were issues with pawn shops at that time; however, those concerns have decreased significantly and there are no specific issues at the moment.
8. Referencing the Beverly Heights Land Use Zoning Plan, she identified single detached housing to the south of the subject property, apartment housing to the north, and multi-commercial buildings to the west.

The Board heard from Ms. Shirley Lowe, Board representative from the Beverly Revitalization Zone Association (the “BRZ”), who provided the following information:

1. She has been directly involved with the community, and is representing the BRZ because the Executive Director is out of the country.
2. Residents viewed 118 Avenue as unattractive with a poor image, resulting in many residents shopping outside the community.
3. In working with leagues and the development office, they developed an Overlay to promote good businesses, including restaurants.
4. As of today, fear of pawn shops along 118 Avenue is diminishing, but it is a work in progress.
5. She feels there is a sufficient amount of loan stores that already service the area, and is concerned that the previous location will also remain as a pawn shop.
6. The approval of this application defeats the purpose of the Community Development Plan.
7. The Association’s meetings are open to the public, but the Appellants did not attend.

The Board heard from the Ms. Colleen Fidler, one of the authors of the Development Plan. She is the Executive Director of the Beverly Town Community Development Society. Ms. Fidler provided the following information:

1. The Society was originally a City Council Committee and it is now a non-profit society.
2. She has worked with the Rundle Heights community for the last 20 years, and strongly believes that Beverly means to be more than just pawn shops
3. She confirmed she is representing the residents of the area and that most are long term elderly and are fearful of what pawn shops entail.
4. Pawn shops have changed the way they do business, but she admitted she could not provide negative statistics, and that the stigma associated with pawn shops is just a perception.
5. The proposed development is currently located in the main business strip and they are moving to a more residential area.

The Board heard from Mr. Lawence Jacobs, representing the Beverly Heights Community League, who provided the following information:

1. He has been a resident of Beverly Heights for 65 years.
2. The League does not support the pawn shop, which they feel would be contrary to the Overlay and culture of the community.
3. They strive to make 118 Avenue a user-friendly experience for the elderly and children.
4. The subject property is currently vacant, and has mostly been occupied by transients. He does not recall it ever being a General Retail Store.
5. The property has not been a reputable building, and it probably does not comply with Building Code.

The Board heard from the Ms. Edith Boonstrud, who has sat on several boards and is a resident of the Beverly community. Ms. Boonstrud provided the following information:

1. She is not opposed to this type of business, but she feels that the development is just another pawn shop.
2. She feels that the community is always fighting against this type of business, including liquor stores. There are already several similar stores on 118 Avenue, and she believes that the proposed development can be accommodated elsewhere.

The Board heard from the Ms. Delilah Gharabli, owner of the commercial building across the street east of the subject property. She has been operating the commercial building since 2001 and purchased it in 2009. Ms. Gharabli provided the following information:

1. Since 2012, they made a façade improvement to the property to make it renter friendly.
2. The improvement cost has increased to about \$100,000
3. Her investment would decline with the addition of a pawn shop.
4. The commercial building that she owns includes seven renters who are fairly established: a hair salon and smoke shop; an automotive; a little grocer; a halail meat shop; a donair and pizza shop; a cellphone and computer repair shop; and a hair accessory shop.
5. She identified pawn shops and cash stores as examples of a failing business community.
6. She has not experienced any negative actions from the currently vacant building, only a small amount of graffiti.
7. She has nothing personal against this particular owner, but it is the perception of pawn shops that she has issues with.
8. She did not receive any correspondence from the Appellant that a pawn shop would be coming to the area. She was only first advised when she received the Notice of Appeal letter from the Subdivision and Development Appeal Board.
9. She acknowledged that the Overlay does not prohibit pawn shops but allows property owners to voice concerns.

In rebuttal, the Board heard from Ms. Juska, who provided the following information:

1. In the list of pawn shops distributed as Exhibit B, 8 out of the 13 are closed.
2. Her client had received no information about the Business Revitalization Zone meeting, notwithstanding the public nature of these meetings.
3. There are regulations in place for pawn stores to prevent predatory practices.
4. The building has been vacant for several years, and there have been transients.
5. Her clients will invest in building and improving the building's condition and appearance.
6. They had sent registered letters to all contact addresses of the tenants, and also left phone messages at the contact numbers. It is possible that the contact information may be out of date, but they have done their due diligence and received little feedback. As such, there was not much that they could do to address concerns.
7. Numbers for pawn stores have decreased.
8. Ms. Tamara Zohner admitted that there is a stigma associated with pawn stores, and they want to address that stigma. She noted that the subject pawn store has the lowest rate of police pickups in the city with respect to pawned stolen items and property.

9. They are working hard to make their business family-friendly, and her own children work in the store.

Decision:

The appeal is GRANTED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

Reasons for Decision:

The Board finds the following:

1. Pawn Stores are a Discretionary Use in the CB1 Low Intensity Business Zone.
2. The proposed development meets all of the development regulations for Pawn Stores in the *Edmonton Zoning Bylaw*, including the Secondhand Stores and Pawn Stores Overlay. The sole issue before the Board is whether or not this Discretionary Use should be allowed.
3. When considering this Discretionary Use, the Board considered whether or not the proposed pawn shop would constitute an incompatible land use with the existing uses of the neighbouring parcels of land. The Board finds that it is a compatible use with the existing uses because:
 - a. The Board is satisfied that there is not a large number of Pawn Shops in the area – only two in the Beverly Heights neighbourhood – so proliferation of Pawn Stores will not be a problem caused by this development;
 - b. the development would be located within a commercial area, with retail stores on the east and west of the subject site, meaning that the development is compatible with pedestrian oriented commercial establishments;
 - c. having a new retail establishment replace a spot that has been vacant for 7 years improves the amenities of the area; and
 - d. the Board heard no evidence beyond suspicions that the location of a Pawn Shop on the subject site would unduly affect the use or value of the neighbouring parcels of land.
4. Accordingly, the Board finds that discretion should be exercised in favour of the Applicant and that the development should be allowed.
5. The Development Authority did not present any significant planning reasons that would lead the Board to find that the proposed development is an incompatible land use. Instead, the Development Authority relied on a document known as the Abbottsfield Rundle Heights Community Development Plan.
6. The Abbottsfield Rundle Heights Community Development Plan is not a statutory plan within the definition of the *Municipal Government Act*. Section 616(dd) of the MGA defines statutory plans as “an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4”. The Abbottsfield Rundle Heights Community Development Plan does not meet this definition.

7. Not only is the Development Plan not a statutory plan within the meaning of the *Municipal Government Act*, it is not a Bylaw of the City of Edmonton either, being approved by a council resolution on October 21, 1996.
8. Section 687(3) of the *Municipal Government Act* sets out the documents that this Board must comply with; it does not list any document class that would include a document such as the Abbottsfield Rundle Heights Community Development Plan. The Board finds that the proposed development is in complete compliance with the *Edmonton Zoning Bylaw*, and is not at odds with any statutory plan as defined within the *Municipal Government Act*. As a result, and given the Board's finding that the proposed development does not constitute a use incompatible with the neighbouring land uses, the appeal is allowed and the development is granted.
9. The Board is satisfied that based on the above reasons, the proposed development 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.

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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

c.c.

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SDAB-D-15-285

Application No. **158040859-001**

An appeal by Sakaw Daycare to convert an existing Single Detached House into a Child Care Services Use building (60 Children, 2- 12-18 months, 6 -19 months-3 years, 32 - 3-4.5 years, 20 - above 4.5 years) and to construct interior and exterior alterations (Sakaw Daycare), located at 5739 - 11A Avenue NW, was TABLED TO MARCH 2 or 3, 2016.