



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-19-017

Project Number: 266010257-006

An appeal to change the use of 27 units of Apartment Housing (9-1 bedroom, and 18-2 bedroom Dwellings) to 48 units of Apartment Hotel, increase the height and amend the floor layout (parking garage, 1-4 storeys) and to construct exterior and interior alterations (change the Building design, increase height, increase parking garage size) to an approved Building was **TABLED** to March 21, 2019.



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Date: February 28, 2019
Project Number: 296619983-001
File Number: SDAB-D-19-018

Notice of Decision

- [1] On February 14, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 17, 2019. The appeal concerned the decision of the Development Authority, issued on January 4, 2019, to refuse the following development:

To convert a Single Detached House to a Childcare Service (maximum 30 Children) and to construct interior and exterior alterations

- [2] The subject property is on Plan 7620138 Blk 6 Lot 102, located at 3404 - 106 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Duggan Neighbourhood Area Structure Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s reasons for appeal; and
- One online response.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Google Maps Screenshot
- Exhibit B – Revised Site Plan
- Exhibit C – Google Maps Screenshot (Affected Property Owner)

Preliminary Matters

- [5] 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.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, M. Malhotra, Pro Consulting Design & Build Inc.

- [8] Mr. Malhotra was accompanied by M. Shah and S. Ahmed.
- [9] Mr. Malhotra submitted two exhibits to the Board:
- A Google Maps overhead screen shot of the subject location (Exhibit A)
 - An amended site plan (Exhibit B)

The subject site was identified on Exhibit A.

- [10] Mr. Shah purchased this property for the specific purpose of developing a daycare as the subject site is a corner property. His wife has 30 years of experience in the field and the goal is to provide a quality child care service to the neighbourhood. They previously lived at the property but no longer reside at this location.
- [11] In his view, the main reason for refusal is related to garbage collection. The collector has to back down the alley to collect the garbage from the subject site and from one other property. The Appellant has changed the location of the garbage bins to avoid any interference with garbage collection and the end of the alley will be kept neat and clean. Garbage is only picked up once a week and they will ensure there is no interference.
- [12] Two shuttle buses will be used as part of the daycare operation. The proposed parking for these buses as well as four additional parking / drop-off spaces were identified on the amended site plan. The walking path from the parking area to the door of the daycare was also identified.
- [13] The character of the house will not change and no exterior changes are planned to the building. It will not be evident that this is a daycare.
- [14] The proposed development has been discussed with the immediate neighbours who indicated their support. One immediately adjacent neighbour offered extra parking for the daycare operation.
- [15] The Appellants provided the following responses to questions from the Board:
- a) There should be no problems with cars maneuvering in and out of the parking spaces. Only one other property backs onto the alley at this location. Also there is

a turn-around area at the end of the dead-end alley which allows quite a large space for vehicles to maneuver.

- b) The lane is wide enough for two cars to pass each other.
- c) They will be running shuttle buses to pick up children from their homes and drop them off at the end of the day which will result in considerably less traffic.
- d) They acknowledged that the Development Officer has not yet seen Exhibit B.
- e) They have not spoken to Parking Services regarding their operational concerns with the use of a dead-end rear alley for drop-off and pick-up activities; nor have they spoken with Parking Services about the absence of an on-street loading zone on either 34 Avenue or 106 Street.
- f) Regulations would allow a capacity of 40 children. The Appellants felt that would be too many for the proposed location and filed their application based on 30 children. This reduced number lessens traffic and noise impacts.
- g) The Appellants used Appendix A to identify the garages of neighbouring properties (rear or front attached), a neighbour's parking pad and which immediate neighbours supported the proposed development. While there is a garage directly across the lane from the subject property, that garage is not used.
- h) The Appellants have one of the bigger lots in the area. They will be moving the existing fence to allow them to use the green area in the back as a parking lot.
- i) They will require three to four staff.
- j) Mr. Shah takes care of snow removal behind the subject site and also removes the snow from the turn-around area at the end of the alley.
- k) One person currently resides at the property but will move out once the daycare operation commences.

[16] A short recess was called to allow the Appellants time to review the Development Officer's suggested conditions should this permit be approved. The Appellants advised they did not have any objections to any of these conditions.

ii) Position of the Development Officer, N. Shah

[17] The Development Authority did not attend the hearing and the Board relied on Mr. Shah's written submission.

iii) Position of E. Noga, Affected property owner

- [18] Mr. Noga purchased his property in November 2018. He has a background in real estate and has an understanding of how to make a site work for different applications and does not see how the proposed location is suitable.
- [19] He estimates the subject property to be 1,200 square feet which is not much room to accommodate 30 children plus 3 or 4 staff. Thirty children is similar to a small school.
- [20] Mr. Noga does not believe it is possible for two cars to pass each other in the alley.
- [21] All parking along 106 Street is continuously occupied.
- [22] As per information from the City's website the intersection of 34 Avenue and 106 Street has a high traffic volume, and safety would be an issue for children. 10,600 cars travel on 106 Street per day and 11,500 cars use 34 Avenue daily.
- [23] Mr. Noga identified the location of his property on Exhibit C. He has concerns that daycare patrons may park in the crescent in front of his house and will walk down the alley to access the daycare, adding to congestion and safety issues.
- [24] He has concerns with traffic congestion in the alley, especially in the winter when people idle their vehicles. Most daycares are in commercial spaces and parking is usually a concern even in those locations.
- [25] Mr. Noga provided the following responses to questions from the Board.
- a) He does not use the alley as he has a front attached garage.
 - b) His deck overlooks the daycare parking area and he believes his privacy and the enjoyment of his property will be affected negatively.
 - c) Currently, there is always loose garbage behind the subject property and the increased traffic will make this worse.
 - d) The Applicants did not obtain his consent for the proposed development, implied or otherwise.

vi) Rebuttal of the Appellant

- [26] The Appellants dropped a letter in Mr. Noga's mailbox and also approached him to provide him with information.

- [27] Mr. Noga does not use the back alley, so the Appellants believe he is not affected. The owners of the property with the rear parking pad approved of the development as did several other immediate neighbours.
- [28] Mr. Shah believes that two cars are able to pass each other in the alley.
- [29] Property owners are permitted to park along 106 Street although not directly in front of the subject site as it fronts the slipway and therefore is too close to the corner. He confirmed that there is no parking on 34 Avenue.
- [30] Parents arrive at staggered times when picking up / dropping off children. The hours of the daycare are from 7:00 a.m. to 5:00 p.m. and it will not be difficult to manage traffic flow.

Decision

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

Reasons for Decision

- [32] The proposed development, a Child Care Service, is a Discretionary Use within the RF1 Single Detached Residential Zone.
- [33] The Board considered the submissions of the parties to determine whether the proposed development is reasonably compatible with surrounding properties and whether there are any planning reasons to deny it.
- [34] The proposed development was refused by the Development Officer for four reasons:
- i) he believes that it will change the principal character of the dwelling contrary to section 80.4(c) of the Edmonton Zoning Bylaw (the “*Bylaw*”);
 - ii) he believes that the number of children is excessive and may create a negative parking and noise impact for neighbouring properties;
 - iii) Waste Management has concerns with vehicle congestion in the dead-end lane during peak times; and,
 - iv) Parking Services also has operational concerns with the lack of an on-street loading zone and with the use of the dead-end lane for drop off and pick up.
- [35] The Appellants argued that the proposed development should be approved for the following reasons:

- i) They are very experienced and able operators, and are seeking less children than allowed under the applicable provincial licensing laws. They believe 30 children is appropriate.
- ii) They believe the City's main concern was with the location of the garbage bins and at the hearing they provided an alternative site plan that would move the garbage bins closer to the lane and change the orientation of two parking spaces. With these changes, they felt the proposed development should be approved.
- iii) There is a definite need for a quality Child Care Service Use in this area and the neighbours support it as shown by their petition of support.
- iv) Access in the lane is not an issue because: few neighbours use the lane; they will clear the snow; drop-offs and pick-ups will be staggered; and two cars travelling opposite directions can simultaneously pass one another in the lane.
- v) The outside appearance of the house is not changing.

[36] The Board received one objection from the owner of an adjacent property across the lane who also attended the hearing. He echoed the concerns outlined by Parking Services. He had two additional concerns. First, congestion and difficulty with access in the lane could lead parents with children to park in the cul de sac in front of his home and traverse the lane on foot to reach the Child Care Service, creating additional safety issues and congestion. Second, his deck will overlook the rear parking area of the proposed development creating privacy and nuisance issues.

[37] The Board finds there are planning concerns with safety, parking and traffic congestion associated with the proposed development, particularly given the intensity of impacts associated with dropping off and picking up 30 children at this location:

- i) The Discretionary Use Child Care Services is subject to the Special Land Use Provisions in section 80 of the *Bylaw*. Section 80.4(b) includes specific locational criteria in residential zones. The subject Site satisfies one of these criteria because it is a Corner Lot location. However, the subject Site does not have the usual attributes that make Corner Lots generally more appropriate for the proposed Use. In particular, the flanking roadway, 34 Avenue, is an arterial roadway where no parking whatsoever is allowed and there is also no parking permitted directly in front of the subject Site along 106 Street as it is a turning lane. Therefore, the additional on-street parking usually associated with Corner Lots is non-existent at this location. In fact, with the locational limitations, the subject Site has less on-street parking than a typical interior Lot. The subject Site does not meet any of the two other locational criteria in section 80.
- ii) The potential for problems associated with access, drop-off and pick-up are exacerbated by the fact that there is no access to the lane from 34 Avenue as the subject Site is located at the end of a dead-end lane. Parents and staff can only access

the on-site parking area from the north or west through the lane. They must maneuver out of the parking spots using the turnaround at the end of the lane and then leave using the same lane.

iii) Two City Departments have expressed concerns regarding this situation:

- (a) Waste Management does not support the proposed application due to potential vehicle congestion in the dead-end rear alley during peak times.
- (b) Parking Services have operational concerns with the use of the dead-end rear alley for drop-off and pick-up activities, and also note the lack of a loading space on either 106 Street or 34 Avenue.

[38] The Board agrees with these concerns and finds that traffic in the lane is likely to increase significantly as the parents and guardians of up to 30 children funnel in and out of the lane to drop off and pick up their children. The increased traffic will add materially to congestion in the lane and will impact the conditions of the lane, particularly in the winter months, for the parents and the residents of the other three properties who have rear access parking areas.

[39] The Appellants asked the Board to approve an alternate site plan showing the garbage relocated closer to the abutting lane and a modification to two parking spaces. The Board notes that these newly proposed revisions may have unanticipated impacts on parking, safety and access issues that were not vetted by the Development Officer in accordance with the usual process. In any event, in this case, the Board finds that the proposed changes do not address the other planning concerns identified by the Development Officer associated with the absence of on-street parking and the location of the parking area at the dead-end of the lane.

[40] For the above reasons the Board finds there are valid planning reasons to refuse the proposed Discretionary Use at this location and affirms the decision of the Development Officer.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Ms. P. Jones, Ms. L. Gibson, Mr. R. Hachigian, Mr. C. Buyze

c.c. City of Edmonton, Development & Zoning Services, Attn: Mr. N. Shah/Mr. A. Wen

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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.