



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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SDAB-D-18-031

An appeal to Construct a Semi-detached House with front verandas, fireplaces, and Basement developments (NOT to be used as an additional Dwelling), and to demolish a Single Detached House and an Accessory Building (rear detached Garage) was **WITHDRAWN**.



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Date: February 26, 2018
Project Number: 188667407-007
File Number: SDAB-D-18-032

Notice of Decision

- [1] On February 15, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 22, 2018. The appeal concerned the decision of the Development Authority, issued on January 11, 2018, to refuse the following development:

Increase the number of children in an existing Child Care Service (23 to 30 Children). (Tots 2 Kids)

- [2] The subject property is on Plan 6143NY Blk 23 Lot 9, located at 14804 - 78 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and applies to the subject property.

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

- Copies of the application, refused permit with attachments and plans;
- Appellant’s written submissions and supporting documents;
- Development Officer’s written submissions dated February 8, 2018;
- Two online responses in opposition to the development; and
- Written submissions from a neighbouring property owner.

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

- Exhibit A – Letters of Support from Daycare Clients
- Exhibit B – Letters of Support from Adjacent Property Owners
- Exhibit C – Notification Map showing location of Owners in Exhibit C
- Exhibit D – Two photos showing front view of subject property
- Exhibit E – Photos showing rear of property and children being dropped off
- Exhibit F – Series of 15 photos showing different views of subject property

Preliminary Matters

- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] One of the panel members, Mr. Somerville disclosed that he was a member of the panel that approved the original Child Care Services in 2016. There was no opposition to the composition of the panel.
- [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, Permit Masters

- [8] The Applicant, Ms. S. Jessani, was represented by Mr. B. Romanesky, an Urban Planner with Permit Masters. Ms. Jessani was also present.
- [9] The building is no longer a residence and is closed on holidays, weekends and during the evenings. There is a high demand for out of school child care in the area. When the Child Care Service first opened, registration jumped from 5 children to 19 children within a month.
- [10] The Appellant referred the Board to an overhead map to provide some context. The subject site is on a corner lot which meets the locational requirements for a Child Care Service and the closest schools are J. A. Fife School, John Barnett School and St John Bosco School.
- [11] The Development Officer failed to justify his refusal by neglecting to identify how an incremental increase of seven children would create a significant negative impact on anyone. His report identified the following issues related to the development: noise associated with the outdoor play area, amount of garbage generated and the rear parking area that is gravel rather than hard-surfaced.
- [12] Substantial changes were made to Section 80 of *Edmonton Zoning Bylaw* (Bylaw 17643 passed on May 25, 2016) to reduce barriers to Child Care Services by removing a number of discretionary requirements that were difficult to implement. Council eliminated everything that had to do with noise from outdoor playspaces, making it very clear that noise generated from outdoor playspaces is not a factor to be considered when refusing a permit.
- [13] The Development Officer did not have any concerns with the number of parking or pick-up/drop-off spaces provided. This development has six on-site parking spaces as the previous Board allowed one parking space to be in tandem. Thirty children require the

same number of pick-up/drop-off loading spaces as twenty-three children; therefore, no further variance is required from the 2016 decision.

[14] Mr. Romanesky presented an overview of the daily operations of the Child Care Services:

- a) The proposed development is a before/after-school care program, not a daycare. Operating hours are between 7:00 a.m. and 6:00 p.m. There are no children at the facility between 8:30 a.m. and 11:30 a.m.
- b) When she first opened the facility, Ms. Jessani did not know which schools she would be servicing, but currently all children in her care attend J. A. Fife School, John Barnett School and St. John Bosco School. A staff member walks the children to J. A. Fife and John Barnett Schools, while Ms. Jessani uses her personal vehicle to transport the children going to St. John Bosco School. She may obtain a van in the future, depending on registration numbers and which schools the children attend.
- c) There are currently seven kindergarten children that return to the facility starting at 11:30 a.m. The times fluctuate depending on which school they attend. The remaining children return to the facility at the end of the school day between 3:10 p.m. and 3:40 p.m. They are provided with a snack and kept busy with activities until they are picked up.

[15] Although the existing Child Care Service is approved for 23 children, it does not mean 23 vehicles are picking up/dropping off children. Vehicles also arrive at staggered times.

- a) Many children are dropped off directly at school in the morning by their parents. After school activities are held at the nearby park during nice weather and children are often picked up directly from the park.
- b) Siblings have priority on the waiting list. Currently, there are two families that have three children and three families with two children; therefore, the number of cars arriving to drop off and pick up children is significantly reduced.
- c) Since many of the children are older, their parents do not even get out of the car; they simply stop to allow their children to get in/out of the car. To help the pick-up process run efficiently, staff will assist the children with their outerwear and ensure that they are ready and waiting for their parents.
- d) Parents have different work hours, and they do not all arrive at the same time to pick up or drop off their children.

[16] Letters of support from the current families using the facility were submitted. (Exhibit A). Only one parent did not sign the petition, as they sit on the Board and felt it would be a conflict of interest. Mr. Romanesky acknowledged that some of these parents may reside outside of the 60 metre notification zone.

[17] A second package containing letters of support from four adjacent neighbours was submitted. (Exhibit B) The location of these properties was marked on the notification map. (Exhibit C)

[18] The Appellant has reviewed and agrees with the recommended conditions of the Development Officer. Many of the conditions are operational items and have nothing to do with an increase in the number of children. They would agree to providing some type of hard surface to the driveway to eliminate the gravel once the weather is conducive to this.

ii) Position of the Development Officer, Mr. P. Adams

[19] The Development Authority did not appear at the hearing and the Board relied on the written submissions of Mr. P. Adams.

iii) Position of Affected Property Owner, Mr. S. Hammett

[20] Mr. Hammett lives directly across the street to the south of the facility. It was his understanding that the original application was for 37 children and approval was given for 23. He questioned why 30 children would suddenly be acceptable and whether the operator will appear before the Board in another year requesting the number be raised to the original 37 children that was contemplated in the original application.

[21] He does not feel it is acceptable to have to deal with so many children in the home next door when living in a residential community. As the numbers continue to grow, parking and noise from the play area will only get worse. He is concerned that the yard on the north side of the house may be turned into additional play space for the children.

[22] There is another daycare that recently opened in the nearby strip mall on 144 Avenue and 77 Street, which was the location originally suggested by the community for the subject development.

[23] The subject building used to be an ordinary house in the neighbourhood. He provided the Board with two photographs to show what the building currently looks like. (Exhibit D) In his view, the red paint and the large sign in the window make the building look partially like a commercial building. He also questioned whether the Child Care will still operate during the summer when there is no school.

[24] Children are currently dropped off in front of the facility because the snow in the rear parking area is too deep. The only vehicle he ever sees in the rear is a small Toyota that belongs to the operator.

iv) Position of Affected Property Owner, Ms. S. Tavares

- [25] Ms. Tavares lives directly to the west of the subject site. She provided two sets of photographs showing different views of the property including the rear, children being dropped off, and different views of immediately surrounding area. (Exhibits E and F). The Board took a short recess to review these photographs.
- [26] Ms. Taveres referred the Board to one of the photographs which showed tire tracks in the snow behind the subject property. It was her belief that the tracks were made intentionally by the facility operator with her own vehicle.
- [27] Ms. Tavares submitted the following concerns regarding the current operations:
- a) She referred to paragraph 31 of the Board's previous decision from June 10, 2016 (SDAB-D-16-133) which stated that two staff members would be walking the children to school, and questioned why there is currently only one staff member escorting the children.
 - b) At the time of the original appeal, the proposed development contemplated serving only J. A. Fife School, and now there are drop-offs and pick-ups to other schools.
 - c) She is concerned about the safety of the children being transported to and from school in Ms. Jessani's personal vehicle without car seats.
- [28] Her main concern is the amount of noise generated by the children who use the outdoor playspace. Her father is gravely ill and lives with her. He has been greatly disturbed by the noise. An increase of seven children will make matters worse and will force her father out of his own home. If a family were living next door, there would be substantially less noise as there would be significantly fewer children in the yard.
- [29] It was her understanding that at the 2016 hearing, the Board informed her that no backyard playspace would be permitted. She therefore questioned why a playspace is now permitted. Nothing has been done in the backyard to mitigate the impacts of children playing there.
- [30] The approved plans from the 2016 decision were displayed. The Presiding Officer noted that these plans were stamped by the SDAB Chair and there is no specification on these plans that the outdoor playspace is not to be used. Also, the outdoor playspace is contemplated in one of the conditions for approval from the previous Board decision (page 9).

v) Rebuttal of the Appellant

- [31] Ms. Jessani stated that the children never play in her backyard as it is used only as a parking lot. The children are always walked to the nearby park for outdoor play time.

- [32] Mr. Romanesky reiterated that the Child Care Service has already been approved, and that this hearing is simply to determine whether an incremental increase of 23 to 30 children is acceptable. The hearing is not meant to evaluate operational procedures.
- [33] The Appellant confirmed that the facility operates during the summer months with a different curriculum that includes field trips.
- [34] Ms. Jessani confirmed she will never be back to ask for a further increase in the number of children. She was not aware at the time of the first appeal that the size of the building allows a maximum of 30 children.
- [35] The Appellant acknowledged that there are two neighbours present in opposition to their appeal but also reminded the Board that four letters of support were provided by directly affected property owners.

Decision

- [36] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The children must be elementary school-aged children, from kindergarten to grade six.
 2. The business shall be run as a before/after-school care service only.
 3. The hours of operation shall be from 7:00 a.m. to 6:30 p.m., Monday to Friday.
 4. The outdoor place space shall be fenced on all sides and all gates shall be self-latching. (Reference Section 80.3.a)
 5. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55.4 & 5.
 6. 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 51)
 7. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. Reference Section (54.1.1.c)

8. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance with Section 54.6.

Reasons for Decision

- [37] The proposed development is for a Child Care Service, which is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [38] In 2016, the Development Authority refused the subject Child Care Service. At the time, a number of relaxations to the development regulations were required. That decision was appealed to this Board, which heard the matter on May 26, 2016 and June 22, 2016 (SDAB-D-16-133). At that time, the Board granted a development permit for a Child Care Service for 23 children, and all the requested variances were allowed.
- [39] This appeal concerns a request to increase the number of children to 30; no variances to the regulations of the *Edmonton Zoning Bylaw* are required, and the development was refused by the Development Officer based solely on his belief that the increase in children would adversely and materially impact the use, enjoyment or value of neighbouring properties.
- [40] With no variances required for this Discretionary Use development, this Board is faced with deciding whether the admittedly strong demand for a Child Care Service in this neighborhood outweighs the concerns of neighbouring property owners, and in particular the concerns of two immediate neighbors who attended the hearing.
- [41] In support of the development, the Appellant provided evidence that the subject Child Care Service can accommodate seven more children without increasing the current staffing levels. Although neighbours in opposition expressed concerns in this regard, no substantive information was submitted to refute this point, and the Board accepts the Appellant's position.
- [42] The Board also heard that demand from local schools is such that there is a need for these additional spots. Opposing neighbours expressed concerns about the influx of children from these other schools, but the Board accepts the Appellant's submissions that traffic and parking issues are mitigated by prioritizing siblings of current clients. For example, there are currently two families with three children, and three families with two children, therefore, for twelve of the currently enrolled children, only five vehicles attend the site for drop-off and pick-up.
- [43] The Board was presented with the following documents supporting the intensification of use:
- Exhibit A: Letters of support from all but one of the current clients of the facility
 - Exhibit B: Letters of support from four directly affected neighbours.

- [44] On the other hand, the Board was in receipt of two online comments in opposition to the development, and also heard from a neighbouring property owner that children were using the outdoor playspace and causing noise concerns. However, the Board accepts the Appellant's submission that although the Child Care Service did initially use the outdoor playspace when it first began operations, it has since successfully used nearby local parks to mitigate noise impacts.
- [45] As a quasi-judicial tribunal that obtains its jurisdiction strictly from the *Municipal Government Act*, this Board has no authority with respect to enforcement matters such as noise complaints, appearance of the property, parking violations, or alleged violations of provincial child care regulations. Based upon the evidence before the Board, the objections of the immediate neighbor opposing the development are of a speculative nature and/or more appropriately within the jurisdiction of another regulatory body.
- [46] The Board also makes the same observations as the 2016 panel in SDAB-D-16-133, and references paragraph 62 of that panel's decision, which states:
- [62] The Board notes that the former section 80(8)(d), which addressed the criteria for the peaceful enjoyment of neighbouring properties in relation to outdoor playspace was repealed by City Council on May 25, 2016.
- [47] For the foregoing reasons the appeal is allowed and decision of the Development Authority is revoked. The development permit to allow an increase from 23 to 30 children for the subject Child Care Service is granted.



Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members In Attendance:

Mr. N. Somerville; Mr. I. O'Donnell; Ms. E. Solez; Ms. K. Thind

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - 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, 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 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.



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Date: February 26, 2018
Project Number: 263829840-001
File Number: SDAB-D-18-033

Notice of Decision

- [1] On February 15, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on December 22, 2017. The appeal concerned the decision of the Development Authority, issued on December 13, 2017 to refuse the following development:

Install a Roof Off-premises Sign. (Pattison Outdoor Advertising)

- [2] The subject property is on Plan RN22 Blk 26 Lot 8, located at 10805 - 124 Street NW, within the CB1 Low Intensity Business Zone. The Main Streets Overlay and West Ingle Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the application, refused permit with attachments and plans;
 - Appellant’s supporting documents;
 - Development Officer’s written submissions;
 - Two online responses in opposition to the development; and
 - One letter from the 124 Street Business Association in opposition.

Preliminary Matters

- [4] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [5] One of the panel members, Mr. I. O’Donnell, disclosed that he was previously employed by Pattison Outdoor Advertising over ten years ago. Mr. O’Donnell also advised he is the Executive Director of the Downtown Business Association and therefore knows Mr. J. McLaren, Executive Director, of the 124 Street Business Association who submitted a letter of opposition regarding this appeal. There was no opposition to the composition of the panel.

[6] 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, Pattison Outdoor Advertising

[7] Mr. M. Caney appeared to represent Pattison Outdoor Advertising and the landowner of the property located at 10805 – 124 Street.

[8] He provided a brief history of the site:

a) Pattison originally had a Fascia Sign on the north side of the building which was sold to the landowner. The City subsequently informed the landowner that no active permit was in place for this Sign.

b) As the Sign encroached on the neighbouring property, permission would be required from that landowner for a permit to be approved.

c) Permission was not granted; therefore, Pattison was consulted to remove the existing Sign and install a roof mounted billboard.

[9] Pattison removed the original Sign and received an approved permit for a single face roof mounted billboard facing north. After obtaining this permit, they found the Sign was not buildable at the Height or location as originally proposed; therefore, the permit lapsed before the Sign was ever installed.

[10] A new application was made for a roof mounted sign which is before the Board today. A few changes were made to the original plans and the most recent application is over the allowable Height for the area. He referred the Board to the elevation drawings under Tab 2 of his supporting materials. A second face was also added to provide more advertising opportunity and to help conceal the structural elements of the Sign.

[11] After receiving the refusal, the Appellant consulted with its engineering team and was subsequently able to revise the structure to fit within the allowable Height. Mr. Caney referenced the revised elevation and engineering drawings under Tab 3 of his supporting materials.

[12] The Development Officer's refusal stated that the Sign nearly doubles the Height of the development and increases the massing to the point where it is not in keeping with the abutting and adjacent commercial properties.

[13] The Development Officer was also concerned that the structural elements of the Sign are visible to pedestrians on 124 Street and to the residential properties to the east. While it was not included in his supporting materials, Mr. Caney submitted that Pattison Outdoor Advertising would be willing to attach cladding to the Sign as a condition of approval

and would provide revised drawings. This cladding could be designed to match the look and architecture of the area.

- [14] Mr. Caney also submitted that the residential properties to the east will not be impacted, and referred the Board to Tab 4 of his supporting materials. Photos show the lane to the east of the proposed development and confirm that no houses are facing the proposed development. It was his view that a roof mounted Sign would not unduly affect the residents of the area or negatively impact their views.
- [15] He acknowledged that letters of opposition were received, but in his view, he has demonstrated that no residents will be affected by the proposed development. The Sign can also be used to affordably promote the businesses in the area.
- [16] If this permit is approved, the Development Officer would have the opportunity to re-visit the impact of the development in the future when the Sign permit expires.
- [17] The Appellant confirmed that the subject development is not a Digital Sign and there is only one light in front of the Sign to illuminate it. Advertising is usually rented out for an average of four weeks.
- [18] There is a Sign at the corner of 107 Avenue and 124 Street which is much larger than the proposed Sign. There are also two Signs along 124 Street that are similar in Height or slightly lower than the proposed development. It was his understanding that one of the Signs was freestanding and the other was roof-mounted.

ii) Position of the Development Authority

- [19] The Development Authority was represented by Mr. P. Adams.
- [20] The purpose of the new Main Streets Overlay is to orientate development to encourage foot traffic. The proposed Sign is more focused toward vehicular traffic, does not fit in with the built form of the area and would double the massing effect.
- [21] Mr. Adams acknowledged that there are comparable streets with roof mounted signs. However, those signs were historically approved prior to the Main Streets Overlay coming into effect and may no longer be approved when they come up for renewal.
- [22] He could not confirm the Height of the other Signs in the vicinity. When he reviewed those other Signs, he simply considered whether the proposed development would meet the correct separation distance from those other Signs. He believes the two nearest Signs are both freestanding.
- [23] He did not reach out to neighbouring businesses to obtain their opinion when refusing the Sign but believes that the letter of opposition from the 124 Street Business Association provides the Board with this information.

[24] Despite the submission by the Appellant that revisions will be made to the Height and that cladding could be provided, it was his view that the general impact of the Sign would not be in keeping with the pedestrian focus and architectural built form of the area.

iii) Rebuttal of the Appellant

[25] Nearby businesses could take advantage of the Sign to promote themselves.

Decision

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

Reasons for Decision

[27] The proposed development is for a Roof Off-premises Sign, which is a Discretionary Use in the CB1 Low Intensity Business Zone.

[28] The Board notes that the proposed development is covered by the Main Street Overlay and finds that the introduction of a large roof top billboard in this area is incompatible with the architectural design and the commercial intent of this re-developing area.

[29] While the Board acknowledges that the applicant proposed to eliminate the Height deficiency and to screen the support structure, the Board finds that the support structure would still be of significant Height in order to gain the maximum elevation for the advertising billboard. The Board concurs with the Development Officer's view that the proposed development is not compatible with sections 59F.3(4)(c) and 59.2(6) of the *Edmonton Zoning Bylaw*.

[30] The Board has reviewed the photographic evidence submitted by both the Appellant and the Development Officer. Of note, both parties submitted Google View images of northbound 124 Street. The Board finds that the streetscape consists entirely of one or two Storey commercial buildings with painted storefronts, special streetlamps, and tree plantings, which are all consistent with the General Purpose of the Main Streets Overlay to strengthen the pedestrian-oriented character of this street. It is within this context that the Board finds that the proposed development, which would protrude markedly above all other structures in the area, is not characteristic with the surrounding properties, nor is it consistent with the General Purpose of the Overlay.

[31] The Board further notes that two on-line responses in opposition and a letter of opposition from the 124 Street Business Association were received. The Board concurs with the Business Association in that the proposed development will "erode the visual aesthetics of [the] area". In arriving at this conclusion, the Board compared the Google Maps image submitted by the Development Officer, which shows 124 Street as it currently exists, with the image submitted by the Appellant in Tab 2, which shows a

rendering of 124 Street with the proposed Sign. In comparing the two, the Board finds that the proposed development does not provide visual interest for pedestrians and is inconsistent with the streetscape improvements which have been made along 124 Street.

- [32] For the foregoing reasons, the Board concludes that the proposed development would not be reasonably compatible with the area and would adversely affect the use, enjoyment or value of the adjacent properties. The appeal is denied.



Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members In Attendance:

Mr. I. O'Donnell; Ms. E. Solez

Important Information for the Applicant/Appellant

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