



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 16, 2018
Project Number: 264607552-001
File Number: SDAB-D-18-018

Notice of Decision

- [1] On February 1, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 8, 2018**. The appeal concerned the decision of the Development Authority, issued on December 12, 2017, to approve the following development:

Change the Use from a Restaurant to a Child Care Service (105 children) and construct interior and exterior alterations (develop outdoor playground).

- [2] The subject property is on Plan 6065HW Blk 23 Lot 4, located at 10539 - 124 Street NW, within the (CB1) Low Intensity Business Zone. The Main Streets Overlay and the 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:

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- A parking variance justification submitted by the Development Officer;
- A memorandum from Transportation Services;
- The Development Officer’s written submission;
- Photographs and a review of an existing Child Care Service from the Respondent;
- The Appellant’s written submission; and
- Two letters of opposition to the proposed development from two adjacent property owners.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – A Google aerial map of the area.

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.
- [8] The Presiding Officer explained that at the time of the Development Permit review, the Development Authority used the parking requirement for Child Care Services pursuant to section 54.2, schedule 1(A)(32) of the *Edmonton Zoning Bylaw* (the *Bylaw*). However, after making the decision it was determined that the Main Streets Overlay (section 819 of the *Bylaw*) applies to the subject site and that the parking requirement should have been calculated according to section 54.2, schedule 1(C).

Section 819.3(11) states “The minimum number of off-street parking spaces required shall be in accordance with Section 54, Schedule 1C.”

Section 54.2, Schedule 1(C)(7) states “All other non-residential Uses requires a Minimum or Maximum of 1 parking space per 100 square metres of Floor Area.”

Based on these regulations, the proposed development complies with the parking requirements and a variance is not required.

Summary of Hearing

i) Position of the Appellant, Mr. T. Hartwig, agent for the Appellant, Mr. R. Assaly:

- [9] Mr. Assaly owns the property immediately to the north of the subject site and has invested millions of dollars on his development to support the pedestrian-friendly vision for 124 Street. His development complies with the entire *Bylaw* and houses interesting boutiques to support progressive shopping experiences.
- [10] The proposed Child Care Service is completely opposite to the vision for 124 Street. The City’s plan for 124 Street aims to be a pedestrian-friendly, main street shopping area that houses the city’s finest restaurants, galleries and boutiques. In his opinion, the Development Officer erred in his decision.
- [11] 124 Street is a busy roadway and safety will be a concern for children. In his opinion, a Child Care Service would be more appropriately located on 123 Street or 125 Street.

- [12] Parking is very limited along 124 Street and is a huge problem for the retail business here. The proposed drop off/pick up spaces located at the front of the building will also cause traffic congestion.
- [13] This building is setback from 124 Street and a 6 foot high fence will be constructed along the front lot line to enclose the outdoor play area. In his opinion, this screening will not create an aesthetic that conforms to the City's vision to create an elegant, vibrant shopping area along 124 Street. It will not contribute to the retail appeal of the area. He suggested that any new development should support the 124 Street vision.
- [14] Mr. Hartwig provided the following information in response to questions from the Board:
- a) The future plan for 124 Street has not been adopted as a Statutory Plan but has been discussed by many business owners as a means to strengthen the vibrancy of this area.
 - b) Portions of 124 Street have evolved to align with the vision but this area is still in transition. There are still several low rise apartment buildings located west of the subject site along 124 Street that will be redeveloped in time.
 - c) Even though the proposed development complies with the parking requirements pursuant to the Main Streets Overlay, the proposed parking spaces are not practical at this location.
 - d) There is no staff parking and it will be difficult for staff to find parking in the area. Even though drop off/pickup spaces will only require short term parking, this will occur during morning and afternoon rush hours and will create traffic congestion and safety concerns.
 - e) The 124 Street Business Association verbally supported the appeal but declined to provide an opinion in writing. The Association typically supports any business that will bring more people into the area.
 - f) In his opinion, the proposed Child Care Service will not support the businesses operating on 124 Street because people will be coming and going from the facility quickly.
 - g) Development that contributes to pedestrian movement along 124 Street is welcomed, specifically restaurants and coffee shops.
 - h) Their development to the north of the subject site meets all of the parking requirements and it was estimated that there are between 40 and 50 onsite parking spaces located at the rear of the building.

- i) The proposed drop off/pick up spaces located at the front of the building cannot be used after 3:30 p.m. because of parking restrictions. Therefore, it will be necessary to pick children up from the rear of the facility. He acknowledged that parking spaces accessed via the rear lane, complied with the *Bylaw*. However, the rear lane is narrow and it will be very congested which may result in parents using the parking spaces for other businesses.
- j) He acknowledged that for 100 children they would likely need 20 – 30 staff, some of which may use public transit but some may require parking which would have to be off-site.
- k) A Boston Pizza previously operated from the subject site and one of the issues that led to the closure of the restaurant was a lack of parking. This restaurant has been closed for at least 10 years.
- l) A Google aerial map of the area was used to identify the subject site and the surrounding uses, marked *Exhibit A*.
- m) Residents of the neighbouring low rise apartment buildings would probably walk to the facility if their children were using the services.

ii) *Position of Affected Property Owners in Support of the Appellant:*

Mr. D. Estephan

- [15] Mr. Estephan appeared as the agent for 2083120 Alberta Ltd., owners of a 12 unit apartment building located at 10513 – 124 Street, south of the subject site.
- [16] The property owner supports the development of any Child Care endeavor. However, the intent of the 124 Street commercial neighbourhood corridor is to maintain the integrity of the area as a pedestrian-friendly commercial, retail and mixed use district and great strides have been made in ensuring the vibrancy and accessibility of this neighbourhood.
- [17] The current area development agreement outlines specific guidelines including maintaining and delivering a shopping, retail and mixed use district that is pedestrian oriented; providing parking and loading areas located on side streets and rear lanes for all businesses; and street front parking during limited hours. Retail and business frontages shall be designed to ensure that significant interaction is made to comply with the West Ingle Area Redevelopment Plan and the current zoning.
- [18] The proposed development is a discretionary use that does not provide adequate parking. The mix of staff parking and client parking will result in high traffic congestion in the lane. Further, the proposed loading zone at the front of the building will take away valuable street parking for neighbouring businesses.

- [19] The proposed six foot high privacy fence along the front lot line abutting 124 Street will diminish the revitalization endeavours in this area.
- [20] The main entrance to the proposed facility is designated off the rear lane. Therefore, the proposed drop-off and pick-up loading area in front of the building will only prolong traffic congestion on 124 Street because parents and children will have to go around the building to access the main entrance.
- [21] The existing building will remain unaltered. The West Ingle Area Redevelopment Plan and the Main Street Overlay specifically outline requirements for such developments and he questioned why it was not directed for this development.
- [22] Mr. Estephan provided the following information in response to questions from the Board:
- a) Even though the proposed development does not require a parking variance, staff parking and the number of loading and unloading spaces required to accommodate the proposed number of children will create traffic congestion and parking problems. The main concern is that vehicles will be using the rear lane to access the main entrance to the facility.
 - b) In his opinion, a Child Care Service would be more appropriately located on a corner lot because access and parking would be provided from both the street and the avenue. The scale and size of the proposed Child Care Service is a concern.
 - c) In his opinion, a restaurant at this location is different because the parking requirements are different. The highest parking demand for a restaurant would be during the lunch hour and in the evening while for a Child Care Service parents will be arriving throughout the day.

Mr. C. Kourouniotis

- [23] Mr. Kourouniotis owns a multi-tenant building located at 105 Avenue and 124 Street and reiterated the concerns of his neighbours.
- [24] The proposed Child Care Service is in complete contradiction to the 124 Street Business Improvement Area Directives and Objectives, which clearly state that the vision is to develop a premier destination main street shopping district to include independent restaurants, galleries and boutiques. This district will be pedestrian-friendly and provide premium services.

- [25] There is already a lack of parking on 124 Street and the proposed Child Care Service will only add to the problem by creating traffic congestion and limiting customer access for businesses operating on 124 Street. He is concerned that parents will use the designated parking for other businesses. It is very difficult to police short term parking but it is frustrating when it interferes with another business.
- [26] The proposed Child Care Service will devalue his property and will hinder new retail tenants from leasing space in his building.
- [27] Parking is not allowed on 124 Street in front of the subject site after 3:30 p.m. and he is concerned that parents will use his parking spaces while picking up their children.
- [28] All of the business owners along 124 Street have worked extremely hard to improve their building facades to create vibrancy along 124 Street. The proposed outdoor play area with the required six foot high fence along the front of the property is not pedestrian friendly and does not help to improve the vibrancy of the street.

iii) Position of the Development Officer, Mr. I. Welch:

- [29] Mr. I. Welch provided a written submission but did not attend the hearing.

iv) Position of the Respondent, Mr. B. Allsopp:

- [30] The owners of Gold Star Day Care currently operate a Child Care Service in northeast Edmonton and will be leasing the subject building and will be making interior alterations. The landlord is responsible for any exterior improvements to the building which is not included in the scope of this application.
- [31] The building area is 505 square metres and six parking spaces are required. Six parking spaces will be provided off the lane, which in his opinion is adequate for the proposed development.
- [32] The subject site is located in close proximity to public transit and the future LRT line, which will provide rapid transit access. It is City policy to promote high density dwellings close to public transportation hubs.
- [33] This neighbourhood is comprised of many high density residential buildings with more in the planning stages. Many of the new developments will be mixed use buildings with street level commercial units and residential dwellings above the podium. Families are being encouraged to live in these types of neighbourhoods and they will require child care. There are currently no Child Care Services located in this immediate area.

- [34] It is anticipated that many of the users of the proposed Child Care Service will walk to the facility which will increase pedestrian traffic along 124 Street. In his opinion, the proposed development meets the intent of the Main Street Overlay to reduce the number of service parking lots and promote pedestrian activity.
- [35] The Child Care Service will use a van to transport children to and from the facility which will help to reduce the number of vehicles coming and going from the facility.
- [36] Transportation Services has reviewed the application. They have reviewed the traffic and parking relative to this location and do not object to the proposed change in use.
- [37] The majority of their staff walks or relies on public transit to get to work. It is also their intent to recruit employees from this neighbourhood.
- [38] The previous restaurant use required between 20 and 50 parking spaces, while the proposed use only requires six parking spaces which will improve the parking situation.
- [39] Although Child Care Services is a discretionary use, the proposed use is clearly contemplated in the CB1 Zone and is an improvement over the building that has been vacant for many years with a rundown patio and a front façade that is boarded up with deteriorating stucco.
- [40] The owners have signed a 10 year lease and the proposed use is a viable, compatible use in the short term.
- [41] Mr. Allsopp provided the following information in response to questions from the Board:
- a) The fence is a requirement of the development regulations pursuant to the *Bylaw*. However, the owners are willing to discuss options with the Development Officer regarding the finishing materials that may be more acceptable to neighbouring property owners.
 - b) The existing patio is in a state of disrepair and will be repaired as part of the development of the outdoor play area.
 - c) Other options were considered to provide additional parking but every business in this area is deficient and it is not feasible to rent parking spaces from another business owner. They also looked at several of the surface parking lots located close to the site but there were no parking spaces available for rent.
 - d) Mr. Allsopp and his client are agreeable to all of the conditions imposed by the Development Officer.
 - v) *Rebuttal of the Appellant, Mr. T. Hartwig, agent for the Appellant, Mr. R. Assaly:*

- [42] The main concern is the traffic congestion that will occur in the rear lane. It is a gravel lane and it is only 20 feet wide.
- [43] The state of the lane and the traffic congestion will make it more appealing for parents to park in the Appellant's parking lot. It is human nature for people to park anywhere close to their destination.
- [44] In his opinion, the previous restaurant use at this location is not relevant to the impact of the proposed Child Care Service. Customers of a restaurant will not create the amount of traffic congestion in the rear lane that is anticipated by this use.
- [45] The General Purpose of the Main Streets Overlay is to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians. The main concern is that the proposed Child Care Service does nothing to contribute to the purpose of the Overlay.
- [46] The need for a Child Care Service in this neighbourhood was acknowledged but at a more suitable location.

Decision

- [47] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:
- 1) All exterior alterations beyond the proposed outdoor playground shall require a separate Development Permit.
 - 2) Any modification to the existing alley access requires the review and approval of Subdivision Planning.
 - 3) There is an existing power pole with Telus facilities in the alley that may interfere with access to parking for the site, as per the Subdivision Planning memorandum of 1 December 2017. Should relocation of the pole be required, all costs associated with relocation must be borne by the owner/applicant. The applicant should contact Ron Hewitt (780-412-3128) of EPCOR Customer Engineering and Lillian Liu (587-985-8574) of Telus for more information.
 - 4) All parking stalls perpendicular to the alley must be a minimum length of 5.5 m.

5) The proposed gate must not swing out over road right-of-way. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.

6) Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as per the Subdivision Planning memorandum of 1 December 2017.

7) There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant. Please contact Bonnie Fermanuik at City Operations, Parks and Roads Services (780-496-4960).

8) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

9) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the start/finish date of project;
- accommodation of pedestrians and vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx

10) Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

11) Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.

12) 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 of the *Edmonton Zoning Bylaw* 12800).

NOTES:

- 1) Signs require separate Development Applications.
- 2) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

ADVISEMENTS:

1) An on-street time-restricted (5 or 15 minute) passenger loading zone (10 m length maximum) along 124 Street may be provided adjacent to the subject site to facilitate drop-off/pick-up activity associated with the development. Time restrictions will be required for the loading zone to reflect the existing tow-away (no stopping) zone between 15:30 and 18:00 Monday to Friday. The applicant should contact Brian Murphy (780-944-0040) of City Operations, Parking Services to coordinate the implementation of the on-street loading zone. Any costs associated with loading zone, including signage, shall be at the expense of the owner/applicant. The location and timing of the loading zone will be confirmed by City Operations.

Reasons for Decision

- [48] A Child Care Service is a Discretionary Use in the (CB1) Low Intensity Business Zone.
- [49] At the time of the Development Permit review, the Development Authority used the parking requirement for Child Care Services pursuant to section 54.2, schedule 1(A)(32) of the *Edmonton Zoning Bylaw* (the *Bylaw*). However, after making the decision it was determined that the Main Streets Overlay (section 819 of the *Bylaw*) applies to the subject Site and that the parking requirement should have been calculated according to section 54.2, schedule 1(C). Based on these regulations, the proposed development complies with the parking requirements and a variance is not required. As this was the only variance, the proposed development completely complies with the *Bylaw*.
- [50] Parking is very limited throughout the 124 Street commercial corridor and all of the businesses along this corridor have had difficulty providing the minimum required number of parking spaces. The Development Authority has regularly considered this as valid grounds for granting the original parking variance.

- [51] Based on the evidence provided the demand for parking would be highest over a period of time in the morning and afternoon when children are being dropped off and picked up from the facility. A loading and unloading zone is proposed at the front of the building on 124 Street that can be used in the morning but not after 3:30 p.m. when parking is restricted on the roadway. Therefore, children will have to be picked up using the parking spaces provided at the rear of the building. However, the Board finds that vehicles will only be parked for short periods of time which is not uncharacteristic of other businesses operating in this corridor.
- [52] Further, the required number of parking spaces will be accessed from the lane which complies with the *Bylaw*.
- [53] Transportation Services reviewed the development application and did not object to the proposed Use at this location subject to several conditions that were imposed by the Development Authority.
- [54] Based on evidence provided by the Appellant and the Respondent, the 124 Street corridor is in flux. There is some new development occurring along the corridor but a considerable amount of older developments still remain.
- [55] Section 819.1 of the *Edmonton Zoning Bylaw* states:
- The General Purpose of the Main Streets Overlay is to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.
- The proposed Child Care Service will bring more people into the area and will strengthen the pedestrian oriented character of 124 Street which is in keeping with the General Purpose of the Main Streets Overlay. People living in the area who walk to the Child Care Service with their children will be exposed to the retail experience being promoted along this main street.
- [56] The area is comprised of numerous high density developments with several high density residential developments planned for this area. The increased Density will bring families into the neighbourhood who may require Child Care Services that are currently not readily available in this area.
- [57] The subject Site is easily accessible by public transit along 124 Street and is in close proximity to the proposed LRT stop located at the corner of 124 Street and 104 Avenue.
- [58] The Board notes that the Respondent is willing to work with the Development Authority to design a fence using building materials that will be aesthetically pleasing in order to ensure that the fence will not significantly impact the streetscape yet comply with Child Care Services guidelines.

- [59] The Board acknowledges that the vision of the 124 Street Business Improvement Area provides a useful perspective on the ongoing development of this area. However, the Board finds that it does not have the status of a Statutory Plan under the *Municipal Government Act* that must be considered by the Board. The Board further notes that the West Ingle Area Redevelopment Plan is silent on the appropriateness of a Child Care Service Use in this area and Child Care Services is not included in the list of discouraged Uses for this area.
- [60] The Board concludes that the proposed development with the conditions imposed is reasonably compatible with surrounding development.

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

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, Urban Form & Corporate Strategic Development, 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 Development & Zoning Services, Urban Form & Corporate Strategic Development, 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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SDAB-D-18-001

Project No. 267660433-001

An appeal to create one (1) additional single detached residential lot was **TABLED** to February 28, 2018.