



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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File Number: SDAB-D-18-036

Notice of Decision

- [1] On February 22, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 30, 2018**. The appeal concerned the decision of the Development Authority, issued on January 11, 2018, to approve the following development:

Change the Use from Professional, Financial and Office Support Services to Religious Assembly (upper floor 227 square metres with 30 seats).

- [2] The subject property is on Plan 6473KS Blk 1 Lot 16, located at 14444 - 118 Avenue NW, within the (IB) Industrial Business Zone.
- [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;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – An aerial photograph of the area submitted by the Appellant.

Preliminary Matters

- [5] 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.
- [6] The Chair 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, Mr. D. Kent, representing, Coronation Business Plaza Ltd.*

[8] Mr. Kent's main concern is parking. He does not oppose the Religious Assembly Use but did not have a parking plan to reference.

[9] In his opinion, there are not 44 legal parking spaces for the subject site. He was not able to count all of the parking spaces for the site due to the snow.

[10] He referred to an aerial photograph showing the location of the buildings and the parking for the subject site and the businesses adjacent to the site.

[11] There is a drive aisle for the properties along the roadway but not the subject site.

[12] Each business has a loading door and parking should not be allowed in this area.

[13] He referenced the Development Officer's written submission regarding the number of parking spaces for the Shanghai Restaurant and the vacant lot. If the restaurant is busy and to capacity, in his opinion, there will be more vehicles than the required parking spaces.

[14] Ward Auctions is across from the proposed development and there is an excess of vehicles parking on the weekends when the auction is operating. There is no on-street parking on 118 Avenue.

[15] He agrees that the proposed development fits in with the discretionary use of the (IB) Industrial Business Zone but he reiterated that the proposed development does not have the required parking.

[16] The subject building is typical of other buildings in the area.

[17] In his opinion, there are provisions for waste management in the area.

[18] In response to questions by the Board, he confirmed that there is a loading door for all of the businesses.

[19] Mr. Kent could not provide anything from the *Edmonton Zoning Bylaw* indicating that a parking space could not be located in front of a loading door.

[20] The Chair referred to the survey plan that was provided by the Respondent that shows that there is a 6.05-metre setback between the subject site and the east property line. In Mr. Kent's opinion, an ingress and egress will be needed for the neighbouring property to prevent vehicles from crossing into their property to access the subject site.

[21] He spoke to the Respondent regarding the hours of operation for the proposed development. He is agreeable to the Religious Assembly operating on Fridays, Saturdays, and Sundays. He does not believe parking will be an issue during this time unless there is an auction at Ward Auctions.

[22] The parking lot is busy during the lunch hour and not as busy on the weekends. The majority of patrons accessing the restaurant come from the businesses in the area.

[23] Ward Auctions usually operates during the day on Saturdays and Sundays. That is the only time the parking lot is full.

ii) Position of the Development Officer, Ms. C. Li

[24] The Development Authority provided written submissions and did not attend the hearing.

iii) Position of the Respondent, Reverend O. Afriyie, who was accompanied by Mr. B. Mantey-Annor

[25] Reverend Afriyie stated that they have a lease for the subject site until they can find a permanent location for their Church.

[26] The Church will have prayers on Friday nights from 8:00 p.m. to 10:00 p.m. but not all of the members attend. A choir meeting is held on Saturday evenings with five or six parishioners. The choir has eight members. The Church service is on Sunday mornings from 9:00 a.m. to 11:30 a.m.

[27] The Rock Shop closes on Saturdays at 5:00 p.m. The Rock Shop did not have any concerns with the proposed development.

[28] They spoke to the Shanghai Restaurant that indicated that the hours for the Church will not be an issue.

[29] The Church does not have a loading door and all of the rear doors of the subject site will be used as emergency doors.

[30] The families attending the Church will car pool to the subject site.

[31] In their opinion, there will be sufficient parking for the number of people attending the Church. The only time there will be 30 people attending the Church will be on Sunday mornings.

iv) Rebuttal of the Appellant, Mr. D. Kent

[32] Mr. Kent is concerned that the Use will remain even if the Respondent finds a new location and a more intensive Religious Assembly could fill that Use.

Decision

[33] 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. No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard and loading, storage, parking and trash collection areas shall be screened from view from any adjacent site and public roadway in accordance with section 55.
2. 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.
3. 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)).
4. Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference section 54.1(3)).
5. All access locations and curb crossings shall require the approval of Transportation Services. (Reference section 53(1)).

NOTE:

1. Signs require separate Development Applications.

Reasons for Decision

[34] The proposed development, a Religious Assembly, is a Discretionary Use in the (IB) Industrial Business Zone.

- [35] This was an application for a change of Use from Professional, Financial and Office Support Services to a Religious Assembly.
- [36] The Appellant takes no issue with the compatibility of a Religious Assembly with the surrounding Uses. The Appellant's concerns however, revolve around parking.
- [37] The Development Officer approved a Site plan submitted by the Respondent that shows that the entire Site involving all Uses present on Site has a total of 43 parking spaces. This is in an excess of the minimum required number of parking spaces pursuant to section 54.1(2)(h) of the *Edmonton Zoning Bylaw* which requires a total of 33 parking spaces.
- [38] The Board also notes the change of Use application actually reduces the total number of one less parking space as the Professional, Financial and Office Support Service Use requires one more parking space than the Religious Assembly Use.
- [39] The Appellant took issue with the Development Officer's conclusion that there were 43 parking spaces on the subject Site. First, the Appellant argued that some of the parking spaces behind the subject building to north should not be counted, because they are located immediately adjacent to man doors that were used to access the rear of the building by its tenants.

The Board does not accept that submission. When asked, the Appellant could not point to any provision of the *Edmonton Zoning Bylaw* that would prohibit parking in front of a man door on a building.

- [40] Second, the Appellant took issue with the five parking spaces immediately east of the subject building. At first, the concern was that those parking spaces would not be sufficiently long enough. However, the submitted survey plan for Lot 16 Block 1 Plan 6473KS, shows that the building is in fact 6.05 metres to the west of the east property line, meaning that all of those five parking spaces are of sufficient length.
- [41] The Appellant pointed out that the access to those 5 parking spaces may have to be achieved by driving upon Lot 17 Block 1. The Appellant wondered whether or not private arrangements for such access have been arranged with the owners of Lot 16 or Lot 17, but no evidence was presented to the Board on that point. Regardless of the issue of access, the Board is not swayed by this issue for two reasons:
- a. Parking spaces do exist and there is no evidence they cannot be accessed.
 - b. Even if those parking spaces are not valid parking spaces due to access issues, it only involves five parking spaces and the Board notes that it still leaves the subject Site with an excess of five parking spaces.

[42] Accordingly, the Board finds that the subject Site does have sufficient on-site parking for the Religious Assembly Use and that no variances are required from the *Edmonton Zoning Bylaw* for the granting of this development permit. The appeal is therefore denied.

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

Board Members in Attendance

Ms. K. Thind; Ms. K. Cherniawsky; Mr. L. Pratt; Mr. A. Peterson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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, 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.