

Edmonton Subdivision and Development Appeal Board

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Date: January 15, 2016
Project Number: 174611200-002
File Number: SDAB-D-15-293

Notice of Decision

This is an appeal dated November 13, 2015, from the decision of the Development Authority for permission to construct exterior alterations to a Professional, Financial and Office Support Services Use building (Karst Properties Parking Expansion - Proposed New Parking Lot Layout).

The development permit application was refused because parking, loading, storage, trash collection, outdoor service or display areas shall not be permitted within a Setback and because parking spaces shall not be provided as Tandem Parking.

The subject site is located on Plan 0320869 Blk 9 Lot 3, located at 1420 - Parsons Road SW and is zoned EIB Ellerslie Industrial Business Zone.

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

The appeal was heard on January 7, 2016.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - A written submission dated December 23, 2015 from the Appellant; and
 - A written submission dated November 23, 2015 from the Development Officer

Position of the Appellant

3. Ms. Janice Agrios of Kennedy Agrios LLP appeared before the Board on behalf of her client, Hodgson Schilf Architects Inc. Ms. Agrios was accompanied by Mr. Roger Schilf of Hodgson Schilf Architects Inc.

4. Ms. Agrios noted the peculiar nature of this application which is essentially to ask for permission to provide more than the minimum number of required parking spaces. Applications are typically made to ask for a relaxation to allow for fewer parking spaces than required by the regulations. She noted that the current parking configuration provides 95 parking stalls which meets the zoning requirements.
5. Ms. Agrios described the EIB Ellerslie Industrial Business Zone as similar to an IB Industrial Business Zone but requiring slightly higher building standards.
6. Ms. Agrios referred to the survey plan and photographs of the subject site and described the building and its location on the site. She also described the access from the street to the site.
7. Ms. Agrios described the problem of attracting tenants to the subject building because of parking shortage. She referred to letters from an existing tenant and a leasing agent which express concerns over the parking shortage. She noted that there is no on-street parking in the immediate area and the closest on-street parking is in a residential neighbourhood to the east. There have been attempts to lease parking space from neighbouring property owners, but there is nothing available.
8. Ms. Agrios submitted that the public transit options in the area are limited. There is a bus stop, but buses arrive in 45 minute or one hour intervals. In answer to a question from the Board about encouraging other transportation options such as carpooling, she suggested that it would be difficult to dictate such measures to tenants.
9. Ms. Agrios addressed the Board's power to grant variances to zoning regulations. The Board is not subject to the same test as that of the Development Officer. The Development Officer may only grant a variance if there is something peculiar to the subject site that creates a hardship in applying the zoning regulations. The Board does not need to find a hardship. Rather, the Board's test comes from section 687 of the *Municipal Government Act* which provides that the Board merely has to determine that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
10. Ms. Agrios said that the any negative impact of the proposed development will be mitigated by the wide grass boulevard adjacent to the site. The boulevard is three or four times the width of the setback. Therefore, there will be a wide separation space between the parking lot and the street.
11. The landscaping plan proposes to add more foliage to what already exists. There will be islands of landscaping at the edge and also landscaping on the interior of the site. Overall, there will be significant landscaping; more than would be required in a typical IB zone.

12. Ms. Agrios noted that no objections have been received from neighbouring property owners who were given notice of this appeal.
13. In answer to a question from the Board about the utility right of way located in the setback, it was agreed that an encroachment agreement will likely need to be made with the owner of the utility right of way.

Position of the Development Authority

14. The Board heard from Mr. Imai Welsh of the City's Sustainable Development department.
15. Mr. Welsh disagreed with the Appellant's interpretation of the Board's variance power. He said that the Board is required to follow the zoning bylaw, including section 11.4(1) which states that "a variance should only be considered in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone". In this particular case, there is nothing in particular about this site that creates a hardship.
16. Mr. Welsh suggested that it is not necessary to encroach on the required setbacks to provide more parking. Rather, reconfiguration and smaller spaces might allow for the desired increase in the number of parking stalls.
17. The grassy boulevard cannot be considered as providing for green space in lieu of the required setback because the boulevard may not be there in the future. The road may be expanded in the coming years and the boulevard would be removed. In answer to a question from the Board about the timeline for expansion of this road, he said he did not know but speculated that it would be within twenty years.
18. There is already an abundance of parking on the site. In fact, under current zoning requirements, this site would have enough parking to allow for any Use except a liquor store and health clinic.
19. In answer to a question from the Board, Mr. Welsh confirmed that no opinion respecting the proposed development was solicited from the transportation department.
20. In answer to a question from the Board, Mr. Welsh agreed that input from the utility right of way owner was irrelevant because that is not a planning consideration.

Rebuttal

21. Ms. Agrios noted that even if Parson's Road is widened, the site will not be affected because it is next to a turn bay which will be preserved.

22. Ms. Agrios reiterated her position with respect to the Board's variance power and disagreed that the Board needed to find a hardship peculiar to the site. She said the Board's authority is clearly set out in section 687 of the *Municipal Government Act*.
23. Ms. Agrios submitted that there is no evidence that this development will create any negative impact on neighbouring properties. In fact, providing more on-site parking will prevent parking spillover into neighbouring streets.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The following variance is granted: Vehicular parking is allowed within the required 6.0 m. Setback abutting Parsons Road and 91 Street as provided on the site plan submitted with this application.

The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions:

1. All developments shall comply with the Performance Standards of Section 57 for the IB Zone. Reference Section 930.4(4) (7)
2. Any trash collection area, open storage area, or outdoor service area including any loading, unloading or vehicle service area that is visible from any adjoining Site, shall be screened from view from the adjoining Site. Landscaping, planting, berming, masonry walls, wood fencing or other man made features shall be provided from the ground to a Height of 1.8 m to block the view from an adjoining Site. Reference Section 930.4(4)(10)
3. Lighting for the display, storage and parking areas shall be mounted on lamp standards or building walls and no exposed bulbs or strings of lights shall be used. Lighting shall be in accordance with Section 51 of this Bylaw. Reference Section 930.4(4) (11)
4. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).
5. 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)
6. 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)

7. Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
8. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed , drained and maintained in accordance to Section 54.6
9. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms: cash to a value equal to 100% of the established landscaping costs; or an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs. Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6
10. Landscaping shall be in accordance to the approved Landscape Plan, Section 55 and to the satisfaction of the Development Officer.

Reasons for Decision:

1. The Board accepts that the wide grass boulevard adjacent to the subject site provides a significant green space. Therefore, the proposed intrusion into the required setback will not have a pronounced visual effect.
2. The intrusion into the Setback is only along less than half of the front lot line and involves only nine full parking stalls and a portion of five other parking stalls. The Setback along 91 Street is not affected.
3. The Board accepts the submission of the Appellant that by expanding on-site parking they will reduce or mitigate spillover parking into neighbouring streets.
4. The Board accepts the submission of the Appellant that on-street parking is unavailable in the area.
5. There were no objections from neighbouring property owners who were duly notified of this application.
6. Based on the foregoing, the Board is of the view that the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

7. The Board notes that utility right-of-way issues are not within its purview. Any necessary agreements vis-à-vis the utility right-of-way should be addressed by the property owner and holder of the right-of-way.

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*,
 - 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*, R.S.A. 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. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Sustainable Development, Attn: Erica Peacock / Harry Luke
Roger Schilf

Edmonton Subdivision and Development Appeal Board

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Harrison Wolfe
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Date: January 15, 2016
Project Number: 163727651-001
File Number: SDAB-D-16-010

Notice of Decision

This is an appeal dated November 26, 2015, from the decision of the Development Authority for permission to operate a Temporary Non-accessory Parking Lot for 2 years (December 2015 – December, 2017).

The development permit application was refused because of deficiencies in the proposed landscaping plan.

The subject site is on Plan B3 Blk 15 Lot 81 and is located at 11540 Jasper Avenue. The site is zoned DC1 Direct Development Control Provision.

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

The appeal was heard on January 7, 2016.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - A written submission dated December 2, 2015 from the Development Officer;
 - A written submission dated January 7, 2015 from the Appellant;
 - A letter dated December 23, 2015 from the Oliver Community League expressing opposition to the proposed development;

Position of the Appellant

3. The Board heard jointly from Mark Lawrence of Stantec, Ryan Brown of Canterra Developments Corp. and the Appellant, Harrison Wolfe.

4. Mr. Lawrence submitted that this appeal is about the proposed landscaping plan which was refused by the Development Officer and, therefore, this appeal should be limited to the issue of landscaping.
5. Mr. Lawrence stated that because this development application is for only two years, it unreasonable to provide unduly costly landscaping. They are not opposed to providing appropriate landscaping. Furthermore, when the site is permanently developed in the future, there will be extensive landscaping. For the time being, there should be some consideration to the temporary nature of the current use and some leeway given.
6. The Board interjected at this point to ask clarifying questions about the proposed Use of the subject site. In answer to those questions, Mr. Lawrence indicated that the site would be used to park inventory vehicles for a neighbouring car dealership. Mr. Lawrence argued that this fits the definition of the Non-accessory Parking Use class as set out in section 7.4(39) of the Zoning Bylaw. Mr. Lawrence argued that although this Use class may be most typically associated with commercial public parking lots used by multiple users, there is nothing in the definition of the Non-accessory Parking Use class to preclude a single user.
7. Mr. Lawrence reiterated that the issue before the Board is in relation to the landscaping plan and not the intended use of the subject site. He noted that they had provided the City with three different landscaping plans. He noted that all of the proposed options were better than leaving the site as a vacant lot. The proposed options involve professionally maintained planters along the perimeter of the site which would enhance the streetscape.
8. In answer to a question from the board about the temporary nature of the permit being sought, Mr. Lawrence indicated that the long term plan of the property owner is to fully develop the site. Given the current economic climate, now is not the time to do that. This temporary use and the proposed landscaping are an improvement for the time being.

Position of the Development Authority

9. Mark Harrison of the City's Sustainable Development department appeared at the hearing to answer questions from the Board.
10. In answer to a question about what is considered when evaluating the proposed Use for a site, Mr. Harrison said that he mainly compares the scope of the application with the drawings provided. In this case, the application tells him that the site is to be used for Non-accessory Parking and there is nothing in the submitted application and drawings to indicate that is not the correct use. If the application is approved on the basis of the information provided and an investigation later reveals that the site is not being used for the approved use, then that is a matter for bylaw enforcement.

11. Mr. Harrison clarified that his understanding of the Non-accessory Parking Use is that it is generally means a public parking lot, such as an Impark lot. When asked if it could be applied to a lot used for the storage of a vehicle dealership's inventory, he said that was "a grey area".
12. Mr. Harrison said that based on the information heard during this hearing, there are three possible Uses that could be applied to how the subject site is actually utilized. These are: Automotive and Minor Recreation Vehicle Sales/Rentals, Non-accessory Parking, or Temporary Storage. The most applicable use would be Automotive and Minor Recreation Vehicle Sales/Rentals.
13. In answer to a question about whether this development complies with the directions of City Council, Mr. Harrison said that the proposed Use class is allowed but the submitted landscaping plan does not achieve the spirit of what Council intended in this DC1 zone.

Rebuttal

14. With respect to Council's intention to provide for pedestrian oriented development, that will be achieved when permanent development is done to this site. For the time being, this temporary Use is better than an empty lot and the proposed landscaping is sufficient.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED.

Reasons for Decision:

1. The Board notes that section 641 of the *Municipal Government Act* directs that an appeal of the Development Authority's decision to the Board "is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision". Therefore, as preliminary question before it can delve into the full merits of this appeal, the Board must explore whether the Development Officer failed to follow the directions of council.
2. The Development Officer refused the permit on the basis of a number of Landscaping provisions within the zoning bylaw. The Board finds no error in the interpretation or application of these provisions.

3. The Development Officer is also obliged to apply the relevant policies as set out in the Oliver Area Redevelopment Plan. The Board reviewed this plan and can find no policy that was contravened by the Development Officer. On the contrary, the Board takes note of particular sections which would reinforce the decision of the Development Officer to refuse the application. Specifically:

Plan Objectives

3.4 To support and encourage the strengthening of the Jasper Avenue commercial strip as the major focus of retail and service commercial activity, particularly pedestrian-oriented activity, in the area. This may include forging links with the adjacent commercial areas of 124 Street and Downtown.

8.5 Policies

2. Lands immediately adjacent to Jasper Avenue shall be developed for a broad range of general retail, service commercial and business support services, oriented to both local and regional shoppers. Residential uses on upper storeys is allowed but not required. Uses which support high pedestrian levels and usage are encouraged. **Auto oriented uses, and residential uses, beyond those which presently exist, are discouraged.** [emphasis added]

4. Design of any redevelopment along Jasper Avenue should include provisions for outdoor seating and assembly, should provide strong visual interest at ground floor levels, and should orient parking and loading to the rear of the building, to be accessed from the rear lane. Developments should have articulated facades to heighten visual interest, and avoid long monolithic facades. Intensive use of display windows and doors is encouraged, and blank walls are discouraged. Design measures must be included to reduce negative impacts such as noise, light, odours and negative visual elements on the residential area north of the lane. **The development of nonaccessory parking fronting directly on Jasper Avenue is discouraged.** [emphasis added]

5. The Board notes that while the Appellant relied heavily on the temporary nature of proposed development, there is nothing in the City of Edmonton Zoning Bylaw that provides for special consideration for temporary developments.

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*, R.S.A. 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 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. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Sustainable Development, Attn: Erica Peacock / Harry Luke
Stantec, Attn: Mark Lawrence
Canterra Developments Corp, Attn: Ryan Brown