



**EDMONTON  
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*Subdivision &  
Development  
Appeal Board*

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Edmonton, AB T5J 0G9  
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## **SDAB-D-18-101**

### **Application No. 279614806-001**

The Development Permit to operate a Major Home Based Business (Studio for Lash Extensions and Brow Services - Black Lash Ltd), expiring May 18, 2023, located at 9716 - 96 Street NW, was **CANCELLED**, therefore no hearing took place.



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Date: July 20, 2018  
Project Number: 275243524-001  
File Number: SDAB-D-18-102

**Notice of Decision**

- [1] On July 12, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 14, 2018**. The appeal concerned the decision of the Development Authority, issued on May 31, 2018, to refuse the following development:

**Remove a portion of an approved landscaped yard to develop additional parking spaces to an existing Professional, Financial, Office Support Service and Indoor Participant Recreation Services site - Existing without Permits (reference Development Permit 174584031-001).**

- [2] The subject property is on Plan 1523562 Blk 6 Lot 2, located at 3470 - Allan Drive SW, within the DC1 Direct Development Control Provision (Bylaw 17739). The Ambleside Neighbourhood Structure Plan and the Windermere Area Structure 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 refused Development Permit;
  - The Development Officer’s written submission; and
  - The Appellant’s written submissions.

**Preliminary Matters**

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[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**

[7] At the outset of the hearing the Presiding Officer explained that because the proposed development is located within a Direct Development Control District, the Board's authority is limited by section 685(4) of the *Municipal Government Act*. The Agent representing the Appellant was asked to indicate how the Development Authority failed to follow Council's directions.

i) *Position of Mr. M. Saeed, representing the Appellant, Windermere Professional Centre Inc.*

[8] Mr. Saeed is aware that the Development Officer cannot vary the regulations of the DC1 Direct Development Control Provision.

[9] In his opinion, the proposed development will not have any negative impact on neighbouring property owners.

[10] The landscaped area was removed and a sidewalk was added.

[11] The existing canopy was designed to protect the entrance from the weather elements.

[12] The building is situated a great distance from the fence. The fence is high, which will mitigate any privacy issues on adjacent properties.

[13] They are willing to plant trees in the front if required.

[14] It is Mr. Saeed's opinion, the Development Officer did not review the proposed development beyond the regulations of the *Edmonton Zoning Bylaw*.

[15] Mr. Saeed provided the following information in response to questions by the Board:

a. He believes the Development Officer followed the directions of Council. However, the Development Officer could have reviewed the proposed development beyond the regulations of the *Edmonton Zoning Bylaw* if the *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 decision did not exist.

b. In his opinion, the Board has the authority to grant the variances even if the Development Officer cannot.

*ii) Position of the Development Officer, Ms. C. Louie, speaking on behalf of Ms. C. Li*

[16] Ms. Louie provided the following information in response to questions by the Board:

- a. The Development Officer does not have the authority to grant variances in this DC1 Direct Development Control Provision even if it is a minor variance.
- b. Ms. Louie confirmed that the Board does not have the authority to grant the required variances.

*iii) Rebuttal of the Appellant*

[17] There is no section in the *Edmonton Zoning Bylaw* where the Development Officer does not have the discretion to grant a variance in the Direct Development Control District.

[18] Mr. Saeed referred to section 55 of the *Edmonton Zoning Bylaw* that refers to the landscaping requirements, which in his opinion, is general.

[19] In his opinion, the Development Officer and the Board has the authority vary the regulations of the Direct Development Control District per section 11.3 of the *Edmonton Zoning Bylaw*.

[20] The subject building is existing and the only variance is for landscaping.

## **Decision**

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

## **Reasons for Decision**

[22] The proposed development is within the DC1 Direct Development Control Provision (Bylaw 17739).

[23] The Board is bound by section 685(4) of the *Municipal Government Act* that states:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal 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.

[24] The Board is restricted in its duties and is limited to determine whether or not the Development Authority followed the directions of Council.

[25] The Board determined the Development Authority did follow the directions of Council for the following reasons:

1. The Agent for the Appellant indicated that they believe the Development Authority followed the directions of Council.
2. The Board was not presented any further information that would have provided the Board the opportunity to consider that the Development Authority did not follow the directions of Council.

[26] For these reasons, the appeal is denied.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Ms. L. Gibson; Mr. R. Handa; Ms. K. Thind

**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.
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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.