



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 28, 2016
Project Number: 219952238-001
File Number: SDAB-D-16-166

Notice of Decision

- [1] On July 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 20, 2016. The appeal concerned the decision of the Development Authority, issued on June 9, 2016, to approve the following development:

Add Child Care Services to an existing Religious Assembly Use
(maximum 60 children).

- [2] The subject property is on Plan 7722337 Blk 64 Lot 28C, located at 3935 - 114 Street NW, within the US Urban Services Zone.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - Development Officer's written submissions, dated June 22, 2016; and
 - Appellant's written documents.

Preliminary Matter

- [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 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, 1816112 Alberta Ltd.*

- [6] The Appellant was represented by legal counsel, Mr. R. Ferguson.

- [7] The Appellant owns a nearby shopping centre located along 40 Avenue and 114 Street, across from the proposed development. The proposed development is located on a site that currently houses a Catholic Church facility, which currently has a parking arrangement with the adjacent Catholic School in which parking is shared between both sites. The terms of the agreement permit the school to use the Church parking lot on weekdays, while the Church may use the school parking lot on the weekends.
- [8] There are only 12 parking spaces immediately in front of the Church, such that if some of these spaces are used by the teachers at the adjacent school, then the Child Care employees or children's parents will need to find alternatives. Mr. Ferguson submitted that these alternatives will likely include using the parking facilities of the Appellant shopping centre across the street from the proposed development.
- [9] On-street parking will also likely be accessed by the Child Care Service's users, but Mr. Ferguson noted that the proposed Child Care Service is on 114 Street, which is a busy roadway. The nature of Child Care Services is such that children will either be walking to/from the facility, or driven to/dropped off by parents, resulting in additional vehicular and foot traffic along 114 Street in the hours before 8:00 a.m. and after 3:30 p.m. Further, a section of 114 Street has been allocated for school bus loading zone, which will further impact the on-street parking stresses and traffic congestion along 114 Street.
- [10] As the safety of children should be considered, Mr. Ferguson submitted that parking for the proposed development should be accommodated on Site. Both on-street pick-up/drop-off and the use of the shopping centre's parking spaces present safety concerns.
- [11] Mr. Ferguson also informed the Board that there is an existing Child Care Service, ABC Child Development Centre, located on the Appellant's Site. It had recently sought to expand its services, and applied for a Development Permit for this purpose. However, due to deficiencies in on-Site parking, the application was refused. The Appellant is of the view that the same rules and regulations should apply in this case.
- [12] Upon questioning by the Board, Mr. Ferguson expressed that ABC Child Development Centre does not consider the proposed development as a direct competitor.

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

- [13] Mr. Belzile explained that his decision was based on the assumption that the parking lot for the subject property would be empty during the day, and that teachers would not be parking on the Site.
- [14] He speculated that some accommodation may be possible for those parents who might shop at the Appellant's shopping centre while picking up their children from the proposed Child Care Service.

[15] Upon questioning by the Board, he explained that the *Edmonton Zoning Bylaw* does not distinguish between a daycare service and after-school care service. Under this Development Permit, the Applicant may operate as a daycare at any time of the day.

iii) Position of the Respondent, Richard Secord Out of School Care

[16] The Respondent was represented by Ms. M. Berg.

[17] Ms. Berg explained that the area surrounding the subject site is in need of childcare services, and there is no viable space in the mall across the street which will offer this opportunity.

[18] Ms. Berg recognized that overflow parking onto the Appellant's site is a problem, but the cause stems from the apartment building located on the southeast corner of 114 Street and 40 Avenue. She submitted that the Appellant's concerns regarding overflow parking on their site is an enforcement matter.

[19] With respect to the proposed development's operations, she explained that this is an application for an out-of-school care service, meaning that parents drop off their children prior to their work day, and pick them up again in the evening. As such, the peak hours will be from 7:00 a.m. to 8:30 a.m. during morning drop-off hours, and 3:30 p.m. to 6:00 p.m. during evening pick-up hours. The proposed service is geared toward children already attending the two neighbouring schools at Greenfield Edmonton Public Schools and St. Stan's Catholic School. Child Care staff will be on-Site to assist during pick-up/drop-off hours, and will walk the children to and from the neighbouring schools. In her view, the service provided will actually reduce congestion in the area by reducing the number of people being dropped off or picked up during the neighbouring schools' peak drop-off/pick-up hours.

[20] Ms. Berg submitted that the employees of the proposed Child Care Service will not be using personal vehicles to drive to/from work. Most employees will either walk or take public transit. Upon questioning by the Board, she explained that bus route number 50 runs through the neighbourhood and comes right in front of the subject Site.

[21] Upon questioning by the Board, Ms. Berg explained that the Child Care Service's bylaws provide authority to terminate a service contract with those parents who violate parking requirements. If necessary, it is possible to forbid parents from parking in the parking lot of the Appellant's shopping centre.

[22] With respect to the parking agreement between the church and the adjacent school, Ms. Berg stated that she has spoken with the church's Pastor and requested that the teachers from the adjacent school cease parking on the Site. However, she is unsure whether the current Pastor is aware of the formal agreement between the two Sites. Should the Board approve the proposed development, the rental agreement with the church will include provision of the twelve on-site parking spaces for the exclusive use of the organization.

iv) Rebuttal of the Appellant

- [23] The Appellant reiterated their concern that 114 Street is already a busy roadway, and that the patrons of the proposed development will park illegally in the shopping mall's parking lot, particularly in the eastern portion.
- [24] If the Appellant is unable to obtain an agreement for use of the off-street parking stalls located in front of the church, parents will need to utilize on-street parking spaces.
- [25] The Appellant also disagreed with the Respondent's submission that the child care staff will not be driving to the school, and submitted that it is impossible to anticipate the future practices of staff members.

Decision

- [26] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED, subject to the following CONDITIONS:
- 1) The Respondent shall enter into a formal agreement with the neighbouring church to obtain the use of 12 off-street parking stalls between 6:00 a.m. and 6:30 p.m., Monday to Friday.

Reasons for Decision

- [27] The proposed development is a Permitted Use in the US Urban Services Zone.
- [28] The only variance required to this Permitted Use is the requirement for 12 off-street parking spaces, which the Respondent, Richard Secord Out of School Care, has not provided.
- [29] The Board accepts the submissions of both parties that there is a strong need for child care and after school care within this neighbourhood, which can be characterized as mixed use but with predominantly residential developments.
- [30] The Board accepts the Respondent's submissions that the proposed development may actually reduce congestion surrounding the subject Site, due to the peak pick-up and drop-off hours falling outside the peak pick-up and drop-off hours of the two neighbouring schools.
- [31] The Board agrees with the written report of the Development Authority that there is a hardship on the Site in terms of parking, thus in the Conditions listed above, the Board has stipulated that the 12 off-street parking spaces in front of the Church are required.

- [32] The proposed development provides a valuable neighbourhood service, and will materially benefit the neighbourhood and its residents by reducing daycare waitlists. Also, it is beneficial to have an after-school care located within close proximity of nearby schools. Indeed, both parties agreed that neither the tenant from the mall across the street that operates a for-profit daycare nor the subject development, which is non-profit, are in direct competition with each other.
- [33] The Board accepts the Respondent's submission that the organization will advise parents not to park in the shopping centre parking lot when dropping off or picking up children from the out of school care, and will terminate service contracts with families that do not adhere to parking requirements. The Board also accepts that there is available public transportation that passes right in front of the school. Finally, the Board also notes that Transportation Planning was consulted with respect to the parking deficiency and expressed no concerns.
- [34] For the above reasons, the Board is of the opinion that granting the variance to this development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Ms. E. Solez, Ms. M. McCallum, Ms. G. Harris, Mr. K. Hample

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.



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Date: July 28, 2016
Project Number: 188048201-001
File Number: SDAB-D-16-167

Notice of Decision

- [1] On July 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 21, 2016. The appeal concerned the decision of the Development Authority, issued on June 2, 2016, to approve the following development:

Change the Use from Funeral Services and accessory Prayer Hall for 50 persons to Child Care Services (60 children - 20, 19 months-3 years / 25, 3-4.5 years & 15, 4.5- 7 years) and to construct interior and exterior alterations (develop on-site outdoor play space)

- [2] The subject property is on Plan 5665CL Blk 15 Lot 147, located at 11517 - 105 Avenue NW, within the DC2 Site Specific Development Control Provision (671). The Central McDougall/Queen Mary Park Area Redevelopment Plan applies to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- Development Officer's written submissions, dated June 28, 2016, including attachments;
- Correspondence from Fire Rescue Services and Transportation Services;
- Respondent's written submissions, including an email with Transportation Services, photographs and a PowerPoint Presentation.

Preliminary Matter

- [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 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, Queen Mary Park Community League (“Community League”)*

- [6] The Community League was represented by Mr. R. Shuttleworth, past President of the Community League. He was accompanied by Mr. D. Forsythe, Director of Planning and Development for the Community League.
- [7] Mr. Shuttleworth noted that City Council has requested that a Transportation Management Study be completed for the Queen Mary Park area. The study has not been submitted to Council yet, but preliminary information indicates that parking is at 104% of capacity. It was the Community League’s position that the parking has exceeded the maximum capacity due to the accumulation of parking variances that have been granted over a number of years.
- [8] Mr. Forsythe submitted Exhibit “A”, consisting of various DC1 Direct Development Control Provisions that fall under the Central McDougall/Queen Mary Park Area Redevelopment Plan. Mr. Forsythe referred to various regulations within these DC1 Provisions, including Section 4(l) of DC1(14141) – Area 3 – Precinct “E”, which provides that “No surface vehicular parking areas are permitted abutting any public roadway, other than a Lane.” He also referred to Section 4(u), which states: “Child Care Services... shall only be permitted when designed as an integral and secondary component of a high rise residential development, and shall not be developed above the lowest Storey of a building.”
- [9] The Board questioned the applicability of these DC1 regulations, as the subject development falls under DC2 Site Specific Development Control Provision (671).
- [10] Mr. Forsythe replied that the documents were obtained from the City of Edmonton’s website. He referred to a previous decision of the Board, in which an application for rezoning had been refused on the grounds that the proposed Use must fit into the Direct Control District. It was the Community League’s view that the Development Officer erred by allowing this Use, a Child Care Service, in contravention of Section 4(u) of DC1(14141). The developer is required to either develop a Child Care Service on the ground floor of a high rise development, or appear before Council for rezoning. Mr. Forsythe explained that the Area Redevelopment Plan defines the area into various precincts, each of which allow for different uses. To change a use within a precinct, the developer must appear before Council and apply for rezoning.

ii) Position of the Development Officer, Ms. E. Peacock

- [11] Ms. Peacock was accompanied by Ms. M. Modrovic from the City of Edmonton’s Urban Transportation department.

- [12] With respect to the applicability of Direct Control Provisions, Ms. Peacock explained that each Direct Control provides for specific geographical areas. In this case, the subject development is located at Plan 5665CL Blk 15 Lot 17, which falls under DC2 Site Specific Development Control Provision (671) (“DC2(671)”).
- [13] Under DC2(671), Daytime Child Care Services is a Listed Use, and the Development Criteria under Section DC2.671.4 provides that Daytime Child Care Services must be developed in accordance with Section 93 of the Land Use Bylaw. Since DC2(671) was passed in 2005, the Development Authority would typically refer to the Land Use Bylaw in effect, which is the current *Edmonton Zoning Bylaw 12800*, passed in 2001. However, the current *Edmonton Zoning Bylaw* does not list Daytime Child Care Services, nor does Section 93 exist.
- [14] It was therefore determined that the parking requirements would follow Section 86.2(2) of the latest version of the old *Land Use Bylaw 5996*, Version 11, February 2001. The Development Officer then relied upon Section 11.2(3) of the current *Edmonton Zoning Bylaw 12800*, and determined that it would be appropriate to replace Daytime Child Care Services with the Use Class Child Care Services. The proposed development was therefore reviewed according to Section 80, under the Special Land Use Provisions for Child Care Services of the current *Edmonton Zoning Bylaw*.
- [15] With respect to parking concerns, Ms. Peacock acknowledged that parking is at a premium in the Queen Mary Park area. However, once the parking study for the area is completed, measures will be put in place to mitigate impacts upon parking.
- [16] Upon questioning by the Board, Ms. Peacock expressed the view that the scheduled reconstruction of the 105 Avenue corridor between 109 Street and 116 Street will not have a further impact upon the development and the parking situation. She stated that although reconstruction is planned, no specific time has been set. Further, the reconstruction anticipates bike lanes, but neighbourhood consultation must still be completed to determine how the corridor will develop.
- [17] Ms. Peacock also clarified that while she might typically advise a loading zone requirement next to the Site, the Development Authority prefers to not provide for loading zones when they might later be taken away by construction activity.

iv) Position of the Respondent, Planet Kids Daycare

- [18] The Respondent was represented by Mr. S. Sogy and Ms. M. Kurniewicz.
- [19] Mr. Sogy acknowledged the parking concerns expressed by the Appellant, but it was his position that the proposed development has sufficient measures to address these concerns. First, the daycare is prepared to provide a private bus service to transport staff to and from the daycare. Discounted bus passes could also be offered to employees, as the subject development is located near transit routes. A bike rack or bike stall which can

accommodate up to five bicycles could also be installed, which also supports the City's future plans to provide bike lanes for all of downtown.

[20] Mr. Sogy explained that the daycare's peak pick-up/drop-off hours are between 7:00 a.m. to 8:00 a.m., and 4:00 p.m. to 5:00 p.m. Parking spaces are only needed for pick-up and drop-off, which average approximately five to ten minutes. Parents will not actually be parking on the Site.

[21] Mr. Sogy referred to the Respondent's PowerPoint presentation and various photographs of the subject Site and surrounding area. He noted that on-street parking is available, with up to 15 spaces along the street abutting the subject property. The pictures also showed the parking situation during the daycare's peak pick-up and drop-off hours. Based on the photographs, Mr. Sogy submitted that businesses in the surrounding area are typically closed during the daycare's peak pick-up and drop-off hours, such that on-street parking is widely available during those timeslots. The Site is also within walking distance of other residential areas, so parents also have the option of walking their children to and from the facility.

[22] Referring to several newspaper articles, Mr. Sogy noted that the lack of available daycares in downtown Edmonton is a recognized hurdle for many residents living in downtown Edmonton.

v) *Position of Affected Property Owners, North Edge Business Association (the "Association")*

[23] The Association was represented by Ms. L. Viarobo.

[24] Ms. Viarobo provided a brief overview of the transitional challenges currently facing downtown businesses. Much of the downtown area is undergoing changes due to initiatives to revitalize the downtown core, including the arena project.

[25] She is aware that a residential parking study has been commissioned by City Council, and that Transportation Planning is currently working to develop a parking plan for the business area. Ms. Viarobo acknowledged that there are parking challenges, and businesses in the area have also observed changes with respect to the parking situation.

[26] However, in her view, people's parking patterns, including the established practice of on-street employee parking will likely need to change as the City continues moving toward downtown revitalization. Daycare services are critical for residents who live in downtown Edmonton, and there is a clear alignment between the Development Officer's decision to approve the proposed development and the goal to increase densification of the Queen Mary Park area. She submitted that a reduction of two parking spaces appears to be minimal, and requested that the Board's decision factor in the transition that the downtown area is undergoing.

v) *Rebuttal of the Appellant*

- [27] The Appellant reiterated that the issue is not merely the variance for two parking spaces, but the cumulative impact of a series of variances granted to multiple developments. Even the Association, which appears to support the proposed development, has noted that businesses in the area have observed changes in parking impacts. Further, the Appellant submitted that post-secondary institutions located in the downtown core, such as Grant Macewan University, further contribute to parking stresses.
- [28] The Community League is also concerned about the anticipated 105 Avenue Corridor and its potential impacts.
- [29] Upon questioning by the Board, both Mr. Shuttleworth and Mr. Forsythe indicated that as residents in the area, the parking issues override the need for daycare services. In their view, the parking situation could be resolved if all stakeholders met for a full consultation process and dialogue.
- [30] Mr. Forsythe also corrected his previous submission with respect to the applicable Direct Control Provision. It was his belief that the subject development falls under Precinct "E".

Decision

- [31] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development permit is GRANTED.
- [32] In granting the development, the following variance to the *Land Use Bylaw 5996* is allowed:
- 1) Schedule 66A(9)(a) of *Land Use Bylaw 5996* is varied to permit six parking spaces instead of the required eight parking spaces.

Reasons for Decision

- [33] The subject development falls under the DC2 Site Specific Development Control Provision (671) ("DC2(671)"). As such, the Board's authority with respect to an appeal of the Development Officer's decision is limited by Section 641(4)(b) of the *Municipal Government Act*, which states in part:

[If] a decision with respect to a development permit application in respect of a direct control district... 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.

- [34] Accordingly, the Board must determine whether the Development Officer followed the directions of City Council.
- [35] The Board reviewed both the DC1 Direct Control Provision documents provided by the Appellant, as well as the provisions under DC2(671). The subject development is legally described as Plan 5665CL Blk 15 Lot 147. Section DC2.671.2 provides for the Area of Application which DC2(671) applies to. This provision clearly states that Plan 5665CL Blk 15 Lot 147 falls within the DC2(671).
- [36] The Board therefore accepts the submissions of the Development Officer that the subject Site falls within a DC2 Site Specific Development Control Provision, and not a DC1 Precinct under the Central McDougall/Queen Mary Park Area Development Plan, which was the submission of the Appellant.
- [37] The Board has also reviewed the regulatory provisions of DC2(671), and agrees with the Development Officer's application of the old *Land Use Bylaw 5996*, Version 11, February 2001, with respect to the parking requirements for the proposed Child Care Service. Section DC2.671.4(k) clearly stipulates that "Daytime Child Care Services shall be developed in accordance with Section 93 of the Land Use Bylaw." As Section 93 does not exist in the current Land Use Bylaw, the *Edmonton Zoning Bylaw 12800*, whereas it does exist within *Land Use Bylaw 5996*, it is appropriate to apply the development regulations, including parking criteria, from the most recent version of the *Land Use Bylaw 5996*. Accordingly, the proposed development is deficient by two parking spaces, pursuant to Schedule 66A(9)(a) of the *Land Use Bylaw 5996*.
- [38] The Board accepts the submissions of the Respondent that there is a strong need for daycare and child care services within this community. The Board further accepts submissions of the Respondent and Transportation Department that there is ample and adequate access to public transportation which will mitigate parking concerns.
- [39] The Board acknowledges that parking stresses are a concern within the subject area, and that in response to these concerns, City Council has commissioned a parking study for the neighbourhood. The intent of this study is to develop a strategic parking plan to address the neighbourhood's parking concerns. However, this plan has not yet been completed. Further, the Board was persuaded by the photographic evidence submitted by the Respondent, which indicated that on-street parking is largely available during the peak pick-up and drop-off hours for the proposed daycare.
- [40] Child Care Services enhance the liveability of neighbourhoods, particularly in those such as the Queen Mary Park area which is undergoing a transition toward higher densification. Based on the information presented before this Board, the proposed development will have minimal impact upon parking in the area, and will in fact enhance the liveability of the neighbourhood.

[41] For the above reasons, the Board is of the opinion that the required variance will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Development Officer followed the directions of Council in granting the required variance to Schedule 66(A)(9)(a) of the *Land Use Bylaw 5996*, and pursuant to Section 641(4)(b) of the *Municipal Government Act*, the Board upholds the decision of the Development Authority.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Ms. E. Solez, Ms. M. McCallum, Ms. G. Harris, Mr. K. Hample

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