

*Edmonton Subdivision and  
Development Appeal Board*

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**Notice of Decision**

This appeal dated June 17, 2015, from the decision of the Development Authority for permission to:

Add the Use of an Automotive and Recreational Vehicle Sales/Rentals Service to an existing Automotive and Equipment Repair Shop and Vehicle and Equipment Sales/Rentals Use (Trucks Plus Auto Centre Ltd, reference Development Permit No. 157506640-001)

on Plan 6097AH Blk 17, located at 16002 - 114 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 15, 2015. The decision of the Board was as follows:

**Summary of Hearing:**

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to add the Use of an Automotive and Recreational Vehicle Sales/Rentals Service to an existing Automotive and Equipment Repair Shop and Vehicle and Equipment Sales/Rentals Use (Trucks Plus Auto Centre Ltd, reference Development Permit No. 157506640-001), located at 16002 - 114 Avenue NW. The subject Site is zoned IM Medium Industrial Zone.

The development permit was refused because the proposed development is neither listed as a Permitted Use nor a Discretionary Use in the IM Zone. It is the opinion of the Development Authority that the proposed Automotive and Minor Recreation Vehicle Sales/Rentals Use is a Principal Use and not an Accessory Use.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written report from the Development Authority dated June 19, 2015.

The Board heard from Mr. Haldane, Legal Counsel for the Appellant, who provided a detailed written submission, marked Exhibit "A", and provided the following information in support of the appeal:

1. He has an existing development permit for a Vehicle and Equipment Sales/Rentals and Automotive and Equipment Repair Shop and the Principal Use involves the customization of vehicles by the installation of after-market accessories. (Tab 1, Exhibit "A")
2. Vehicles are acquired and upgraded with materials and labour supplied in the shop.
3. The upgraded vehicles are displayed in the shop for a period of time. Once the marketing value associated with the upgraded vehicles has diminished, the vehicles are available for resale.
4. The Appellant requires an automotive business licence to sell these vehicles itself. The Alberta Motor Vehicle Industry Council ("AMVIC") requires proof of municipal approval prior to granting an automotive business licence. Tab 2, Exhibit "A" is an excerpt from AMVIC's website regarding new automotive business licence applications. This development permit application is necessary so the Appellant can get the municipal approval required by AMVIC.
5. The development permit application describes the proposed business activities: "*Vehicle and Equipment Sales/Rentals and Automotive and Equipment Repair Shop, with an accessory use of sales of demo vehicles which have been upgraded in order to demonstrate the quality of workmanship associated with Automotive and Equipment Repair use, such accessory use being naturally incidental, ancillary, subordinate, and devoted to the Automotive Equipment and Repair use and is viewed in law as not existing, as per City of Edmonton v. Chen, 1999 ABCA*". (Tab 3, Exhibit "A")
6. The proposed development permit application to add a Use will allow the on-site sale of demo vehicles that have been upgraded to demonstrate workmanship.
7. The addition of Automotive and Recreational Vehicles Sales is an Accessory Use to the existing Automotive and Equipment Repair Shop and is not the principal Use.

The Board then heard from Mr. Shabani, representing the Appellant, Trucks Plus Auto Ltd., who provided the following information:

1. His business involves the customization of vehicles with after-market accessories. Sixty percent of his business is comprised of the installation of rims and tires, 30 to 35 percent is the installation of other accessories and the remainder is repairs that arise during the installation and customization of vehicles.
2. After-market accessories are frequently turned over and replaced with new inventory.
3. The main distributors offer promotional parts including fenders, lifts, tires and headlights.
4. These promotional items are installed on vehicles to allow prospective customers to visualize how they would look on their own personal vehicles.
5. The business has grown and they relocated to this new, larger location in 2008.
6. As new products replace older items, new demo vehicles are created and the outdated demo vehicles are sold.
7. At the present time he has to sell the demo vehicles to dealerships at a significant discount because he does not have a licence to sell directly to retail customers.
8. He has no intention of starting a business to sell used vehicles.

9. There will be no signage or exterior indicators on the premises that vehicles are being sold from this location.
10. Videos contained in Exhibit “B” were shown to illustrate the nature of the existing business and the physical layout of the interior of the building, specifically two demo vehicles and automobile accessory inventories.
11. He applied for an Accessory Use so that demo vehicles could be sold directly to retail customers for a higher return than selling to a dealership.
12. The building is approximately 8,000 to 10,000 square feet in size and a demo vehicle can be displayed in the showroom.

Mr. Haldane continued by referencing his written submission to make the following points:

1. *Accessory* is defined in the *Edmonton Zoning Bylaw* (Tab 5, Exhibit “A”). The sale of demo vehicles is Accessory to the main business currently operating on the subject site.
2. The Alberta Court of Appeal considered Accessory Uses in *Chen v. Edmonton (City)*, 1999 ABCA 194 (Tab 6, Exhibit “A”). Justice Cote recognized that an existing defined Use can also be an Accessory Use. These ancillary uses are simply part of the predominant use.
3. In the *Chen* case, the dominant use was a restaurant and the ancillary use was a drive through window, which was also a defined use class.
4. Section 50.1(3) of the *Edmonton Zoning Bylaw* states that “*Accessory Uses and buildings are discretionary in a Zone when Accessory to a principal Use which is a Discretionary Use in that same Zone and for which a Development Permit has been issued.*” (Tab 7, Exhibit “A”)
5. In this case there is a Development Permit for a Principal Use and the proposed Use is incidental and it services the Principal Use.
6. The Sustainable Development Department is concerned that the proposed Use will not remain an Accessory Use but will become a Principal Use. This concern can be addressed by putting the following conditions on the development permit:
  - a) Demo vehicles offered for sale must be customized with accessories sold by the existing business.
  - b) Demo vehicles offered for sale must be displayed indoors or stored in the fenced area located directly east of the building.
  - c) There shall be no outdoor signage to indicate that vehicles are available for sale.
  - d) The sale of vehicles is limited to 10 vehicles per year and no more than 3 vehicles may be offered for sale at any given time.
7. Mr. Haldane stated that the fourth condition, limiting the number of vehicles for sale, is least palatable to the Appellant.
8. The Appellant confirmed that, given the time required for customization and the turnover time for after-market accessories, 10 would be an acceptable annual limit.
9. A development permit is required as a prerequisite to obtain a licence from AMVIC and a breach of that licence carries significant legal consequences, including fines up to \$300,000 and prison sentences.

They provided the following responses to questions:

1. Conditions placed on an approved permit would ensure that the use could not expand to become the principal Use on the subject site.

2. The main purpose of the demo vehicles is to advertise accessory parts that are available for sale and installation through the primary business on the site.
3. It is difficult to estimate the number of demo vehicles that would be on site at any one time. However, it could exceed 10 because all their suppliers are different and products turn over at different rates.
4. There are currently two demo vehicles on site but he anticipates that there will be four on site in the near future.
5. When a product is received from a supplier, a vehicle that is most appropriate for that product is purchased or a request is made to a dealership for a suitable vehicle. The demo vehicle is used to promote the product. Once the product is replaced or upgraded, the demo vehicle is sold.
6. Six demo vehicles have been sold since January 2014.
7. The only practical change that will result from the approval of this development permit is that demo vehicles will be sold at the retail level rather than at the commercial level, which will result in increased profit.
8. There is usually one demo vehicle in the showroom during the day and the other vehicles are either being used or stored in the secured fenced area located east of the building.
9. Demo vehicles are not parked in the customer parking lot.
10. Vehicle sales comply with the definition of Accessory contained in the *Edmonton Zoning Bylaw* because it is naturally incidental to this specialized repair shop, which provides after-market customization.

The Board then heard from Mr. Luke and Mr. Shah, representing the Sustainable Development Department, who provided the following information:

1. It was their opinion that the proposed development does not comply with the General Purpose of the IM Medium Industrial Zone.
2. The proposed development is located on an interior lot in an industrial area.
3. The approved development permit was issued for a Repair Shop and Vehicle Sales for heavy industrial vehicles.
4. An AMVIC licence is required for the sale of smaller vehicles.
5. They disagreed with the Appellant that the proposed development for automotive sales is incidental to an Automotive Repair Shop.
6. Allowing this development would set a dangerous precedent in the IM Medium Industrial Zone.
7. The property owner had applied to rezone the site from IM Medium Industrial Zone to IB Industrial Business Zone in order to allow automotive sales but this rezoning application has not been finalized.
8. The original buildings on site were general contractor buildings.
9. The proposed Use is neither Permitted nor Discretionary in the IM Medium Industrial Zone and does not fit the definition of "Accessory", pursuant to Section of 6.1(2) of the *Edmonton Zoning Bylaw*.
10. An Accessory Use to an approved Discretionary Use would be considered Discretionary but the proposed Use would not comply with the General Purpose of the IM Zone.

11. A new development permit application for Automotive and Recreational Vehicle Sales/Rentals Service at this location would be refused because it is neither a Permitted nor Discretionary Use in this Zone.
12. An Automotive Sales Use is more suitable for an IB Industrial Business Zone and the site should be rezoned before this Use can be allowed.
13. The AMVIC requirements acknowledge that the proposed Use is separate because a licence is required in order to sell automobiles.
14. It was their opinion that imposing conditions is not practical because enforcement will be difficult.
15. The Court of Appeal case cited by the Appellant involved a restaurant with a drive through window as an accessory use. In that case, both uses involved the preparation and sale of food. That case is not applicable here because the two Uses proposed by the Appellant are of a different nature. "Auto sales is auto sales and auto repair is auto repair".
16. He agreed that if the proposed Use were considered to be Accessory, it would be a Discretionary Use pursuant to Section 50.1(3) of the *Edmonton Zoning Bylaw*.
17. This application will increase the intensity of use on the subject site and parking could become a problem. With used car lots, they have experienced problems with cars being parked on setbacks.

Mr. Luke and Mr. Shah provided the following responses to questions:

1. Mr. Luke used the Site Plan to illustrate the layout of this multi-use site at the corner of 114 Avenue and 160 Street.
2. Building C is the only building on this site that has secured parking. This is not the building used by the Appellant.

Mr. Haldane made the following points in rebuttal:

1. A Vehicle and Equipment Sales/Rentals Use previously existed at this site. This Use involved heavy equipment sales, which in his opinion is a significantly more intense Use than the proposed development.
2. Permitting the resale of demo vehicles is consistent with the General Purpose of the IM Zone.
3. This business is unique and will not set a precedent in the Zone.
4. It was his opinion that the particulars of this business must be considered. The principal use occurring on the site is the customization of vehicles and part of the marketing model includes increasing the visibility of the product by using demo vehicles.
5. He confirmed that the application to rezone the subject site from IM to IB has been abandoned because it was not appropriate to proceed given the other uses on this site.
6. It was his opinion that enforcing a condition regarding the number of vehicles sold could potentially be a problem but all of the other conditions could easily be enforced.
7. The Applicant is making every effort to comply with the requirements of the *Edmonton Zoning Bylaw* and it will be policed through the AMVIC business licencing process.
8. Mr. Haldane referred to the site plan to identify the location of fences, designated parking and storage areas on the subject site.

9. He also identified the fenced secure area located on the east side of the Appellant's building that will be used to store the demo vehicles that will be sold from the site. This area is bordered by mature landscaping and the site to the rear is zoned IH Heavy Industrial Zone.

**Decision:**

that the appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** to allow an Accessory Use of sales of demo vehicles which have been upgraded to advertise the accessories sold by and the quality of workmanship associated with the Automotive and Equipment Repair Shop Use, subject to the following conditions:

1. Vehicles offered for sale are restricted to demo vehicles which have been customized with accessories that are sold and installed at the existing Automotive and Equipment Repair Shop;
2. Vehicles offered for sale shall be stored indoors or in the secure storage area as highlighted on the approved Site Plan;
3. There shall be no outdoor signage onsite to advertise the sale of vehicles;
4. No more than 10 vehicles shall be sold per calendar year and no more than three vehicles shall be available for sale at any given time.

**Reasons for Decision:**

The Board finds the following:

1. The existing Use, Automotive and Equipment Repair Shop, is a Discretionary Use in the IM Medium Industrial Zone.
2. The proposed use, Automotive and Minor Recreation Vehicle Sales/Rentals, is not a listed Use in the IM Medium Industrial Zone (Section 420 of the *Edmonton Zoning Bylaw*).
3. However, the Appellant takes the position that the proposed Use is Accessory to the existing Use.
4. Accessory Uses are discretionary in a Zone when Accessory to a principal Use which is a Discretionary Use in that same Zone (Section 50.1(3) of the *Edmonton Zoning Bylaw*).
5. Section 6.1(2) of the *Edmonton Zoning Bylaw* defines Accessory as "when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site."
6. The Development Authority took the position that, because the proposed Use of Automotive and Recreational Vehicle Sales/Rentals is neither a Permitted nor a Discretionary Use in the Zone, the development permit must be denied.
7. The Board finds that the Court of Appeal case cited by the Appellant, *Chen v. City of Edmonton*, 1999 ABCA 194, establishes that a Use can be considered an Accessory Use even if that Use is a defined Use Class.
8. Further, Section 50.1(3) of the *Edmonton Zoning Bylaw* states that Accessory Uses are discretionary when Accessory to a principal Use which is Discretionary in the Zone.
9. Therefore, just because the proposed Use would not be allowed in the Zone if it were a Principal Use, this does not automatically mean that it cannot be allowed as an Accessory

Use. If the proposed use is Accessory to the existing Automotive and Equipment Repair Shop Use, which is a Discretionary Use in this Zone, then it is considered discretionary and may be allowed.

10. The Development Authority takes the position that the proposed Automotive and Recreational Vehicle Sales/Rentals Use does not fit the definition of Accessory in Section 6(2) of the *Edmonton Zoning Bylaw* because vehicle sales are not “naturally or normally incidental, subordinate and devoted to the principal Use” of Automotive and Equipment Repair Shop. The Development Authority points out that auto repair shops do not typically sell vehicles.
11. The Board is of the view that the proper application of the definition of “Accessory” is to determine if the proposed Accessory Use is naturally or normally incidental, subordinate and devoted to the *particular* principal Use being carried out at the Site.
12. In the instant case, the principal Use is the installation of various auto accessories on vehicles. As a means to advertise the accessories it sells and to demonstrate the quality of its workmanship, the Appellant installs accessories on demo vehicles that can be viewed by prospective customers. At some point the demo vehicles become less effective for their intended purpose and must be disposed of to make room for new demo vehicles. The Appellant requires a development permit so it can sell these vehicles directly from its premises. The Appellant estimates that only about 10 vehicles would be sold annually.
13. Viewed in the context of the business model of the Appellant, the Board is of the view that the sale of the demo vehicles is Accessory to the principal Use of Automotive and Equipment Repair Shop. The sale of a small number of demo vehicles after they have outlived their usefulness is normally incidental, subordinate and devoted to the principal Use. Accordingly, the proposed Use is a Discretionary Use pursuant to Section 50.1(3).
14. Section 420.1 of the *Edmonton Zoning Bylaw* states that *the purpose of the IM Medium Industrial Zone is to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. This Zone should normally be applied on the interior of industrial areas adjacent to collector and local industrial public roadways such that Uses are separated from any adjacent residential areas by a higher quality Industrial or Commercial Zone.*
15. In the Board’s opinion, the proposed Accessory Use is not incompatible with the purpose of the Zone. The incidental sale of demo vehicles will not significantly change the principal Use currently being carried on by the Appellant.
16. The Development Authority expressed concern that allowing the proposed use would lead to the sort of parking issues that have been experienced with used car lots where vehicles are parked on setbacks. The Board is satisfied that will not be a problem here. The proposed Accessory Use is not a typical used car lot. Further, the Site Plan demonstrates that there is ample parking on site.
17. The Development Authority was concerned that the Accessory Use of selling demo vehicles would expand and become a principal Use. The Board finds that the conditions imposed for the approval of an Automotive and Recreational Vehicle Sales/Rentals Service as an Accessory Use will ensure that this Use does not become the principal Use on this site.
18. The Board notes that there were no letters of objection received and no one appeared in opposition to the proposed development.

19. Based on the above, the Board finds that allowing the proposed Accessory Use of sales of demo vehicles which have been upgraded to advertise the accessories sold by and the quality of workmanship associated with the Automotive and Equipment Repair Shop Use on the subject site 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.

### **Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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. M. Young, Presiding Officer  
Subdivision and Development Appeal Board

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**Notice of Decision**

This appeal dated June 23, 2015, from the decision of the Development Authority for permission to:

Construct two buildings (9 bay Rapid Drive-through Vehicle Services Use building and a General Retail Stores Use building) (Car Wash and C.R.U. (A) Development)

on Plan 0620449 Blk 47 Lot 46, located at 5004 - 162 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 15, 2015. The decision of the Board was as follows:

**Summary of Hearing:**

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

Ms. Umarji, representing the Appellant, acknowledged that she worked with Mr. Young several years ago. Both Mr. Young and Ms. Umarji felt that there was no conflict. The parties in attendance had no objection to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct two buildings (9 bay Rapid Drive-through Vehicle Services Use building and a General Retail Stores Use building) (Car Wash and C.R.U. (A) Development), located at 5004 - 162 Avenue NW. The subject Site is zoned CNC Neighbourhood Convenience Commercial Zone.

The development permit was refused because of an excess in the maximum allowable number of bays and a deficiency in the minimum required number of parking spaces and loading spaces.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Development Authority dated June 30, 2015.
- A written submission from the Appellant dated July 8, 2015.

The Board heard from Ms. Umarji and Mr. Umarji, representing the Appellant, Zona Developments, who provided the following information in support of the appeal:

1. The Appellant's photographs show the subject site and its relationship to surrounding developments. (Tab 2, Appellant's submission).
2. There is a 24 hour 7-Eleven convenience store and gas bar operating on the subject site.
3. It was her opinion that the development of a 9 bay car wash will complement the existing uses.
4. The submitted plans illustrate that the mechanical room will be situated between the existing 7-Eleven and the trash receptacles on the site. (Tab 3, Appellant's submission).
5. The car wash building will be screened from surrounding developments by fences and landscaping.
6. It was her opinion that the proposed development is consistent with the General Purpose of the CNC Neighbourhood Convenience Commercial Zone.
7. She disagreed with the Development Officer's interpretation that the "stalls" located inside the car wash are "bays".
8. A "bay" is not defined in the *Edmonton Zoning Bylaw*.
9. The proposed stalls inside the building will be separated by curtains. It was her opinion that the entire building is a single bay and the stalls located inside should not be classified as bays.
10. The Appellant's photographs show similar Rapid Drive-through Vehicle multi-stall car washes located in other CNC Zones in the city. (Tab 4, Appellant's submission).
11. In a previous decision, the Subdivision and Development Appeal Board concluded that a similar proposal was a single bay with multiple stalls within the building and approved the development on that basis. (Tab 4, Appellant's submission).
12. Transportation Services did not object to the variances required for parking and loading spaces. (Tab 5, Appellant's submission).
13. The proposed development will not add to traffic problems in the area because of the already existing 24 hour convenience store and gas bar operating at this site.
14. Car washes of this type only require queuing spaces for approximately two months of the year.
15. There is enough space on-site for a seven vehicle queue which exceeds the minimum required six vehicle queue.
16. The submitted Noise Study concluded that the proposed development will create minimal noise, most of which will be generated in the mechanical room. The mechanical room has been located away from 51 Street and away from the residential development located on the other side of that street. (Tab 6, Appellant's submission).
17. Noise generated by the carwash will be limited to 55 decibels which is approximately the same level as a conversation being overheard from 1 metre away.
18. The closest residence is located approximately 49 feet (15 metres) away from the car wash.
19. Every attempt has been made by the Appellant to mitigate odour and noise problems through the provision of landscaping, fencing, setbacks and the location of the mechanical room on the side of the building.
20. The placement of the car wash adjacent to the parking lot of the abutting apartment building to the north will also mitigate any negative impacts.

21. The proposed development met the general intent of the Area Structure Plan.
22. The proposed development will service the neighborhood and will not have a negative impact. The proposed car wash will provide a buffer between the existing 24 hour convenience Store and the residential neighbourhood.

Ms. Umarji provided the following responses to questions:

1. She confirmed that the examples of other single entrance, multi-stall car washes are all located in CNC Neighbourhood Convenience Commercial Zones.
2. If the Board finds that the proposed development is a 9 bay car wash, they are requesting a variance to the maximum allowable number of bays.
3. It was their opinion that the variance should be allowed because the use will complement the area and the existing 24 hour convenience store and gas bar.
4. The noise study confirmed that automatic one bay car washes are noisier than wand wash car washes because of the blowers located at the exists.
5. The proposed development will not create that type of noise and it was her opinion that the number of bays has been limited to one in this zone to address possible noise concerns associated with automatic car washes.

The Board then heard from Ms. Erica Peacock, representing the Sustainable Development Department, who provided the following information:

1. Ms. Peacock focused her comments on the excess number of allowed bays and whether or not this would cause adverse harm to affected property owners.
2. The proposed development is subject to the Special Land Use Provisions of Section 72 – Vehicular – Oriented Uses of the *Edmonton Zoning Bylaw*.
3. It was her opinion that Section 11.4 of the *Edmonton Zoning Bylaw* limits her discretion to grant variances only in cases of unnecessary hardship or practical difficulty which does not apply to this situation.
4. Section 310.5(2)(a) of the *Edmonton Zoning Bylaw* specifically states that the total number of bays shall not exceed one for any given Site.

At this point the Chairman explained that the variance power provided to the Board pursuant to the *Municipal Government Act* is broader than the Development Authority's variance power and is based on potential harm to neighbouring property owners and the neighbourhood as a whole.

Ms. Peacock continued by making the following points:

1. The subject site is bordered by arterial roadways which provide a buffer between the proposed development and residential properties. The Appellants have mitigated potential odour and noise issues with the proposed landscaping, fencing and setbacks.
2. Noise impact will be further mitigated because the mechanical room has been sited away from the residential properties.
3. There is a parking lot located between the subject site and the apartment building on the adjacent site to the north.

4. At one time Development Officers were of the view that they could classify one large room with multiple stalls as a single “bay”. However, the bylaw text amendments made in 2008 to Section 72.2(5)(b) of the Edmonton Zoning Bylaw (Appendix 2 of her submission) and the diagram attached as Appendix 3 in her submission, make it clear that the proposed development is a nine-bay single entrance car wash.
5. She clarified that Appendix 3 is an internal documents that are not contained in the *Edmonton Zoning Bylaw* or accessible to the general public.
6. The term “bay” is not defined in the *Edmonton Zoning Bylaw*.
7. She reiterated her opinion that the required variance would not materially impact affected neighbours, but she does not have the authority to grant the variance.
8. Her discretion is limited by the development regulations of the *Edmonton Zoning Bylaw* which limits the number of allowable car wash bays in a Rapid Drive-through Vehicle Services Use to one in this Zone.
9. Ms. Peacock could not confirm that the purpose of this limitation was to address noise concerns, but it was her opinion that in this case the Applicant has taken steps to address any possible noise concerns.
10. She acknowledged that a wand wash such as the proposed one is usually quieter than other types of car washes, but problems could result if it was located immediately adjacent to residential properties.

Ms. Umarji made the following points in rebuttal:

1. The building will be constructed of precast concrete with dense foam that will help eliminate noise.
2. Appendix 3 of the Development Officer’s submission showing potential configurations of car washes is an internal document and is not included in the *Edmonton Zoning Bylaw*.

**Decision:**

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. Permanent Area Contribution (PAC) - Storm and sanitary PACs have been paid as part of Hollick Kenyon Stage 13B project under Servicing Agreement No: 1179.
2. Expansion Assessment (EA) - Expansion Assessment has been paid as part of Hollick Kenyon Stage 13B project under Servicing Agreement No: 1179.
3. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge (SSTC) fee of \$4279.04. Based on our records, SSTC for the property was never assessed. SSTC is applicable to the entire property of 0.5983 ha at the rate of \$7,152/ha. The area is obtained from the City's information computer program called POSSE. The above SSTC charge is quoted at year 2015 rate. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250 - 101 Street NW.
4. Access from the site to 50 Street and 162 Avenue exists, as shown on the Enclosure. Any

modification to the existing accesses requires the review and approval of Transportation Services.

5. A proposed sidewalk connection from the site to the City sidewalk on 162 Avenue is a requirement, as shown on the Enclosure. A minimum 2 m from the edge of excavation of the sidewalk construction to any boulevard tree is required. Boulevard trees adjacent to the site must be protected during construction. The owner/applicant must contact Mark Walz of Community Services (780-496-4990) at least 4 weeks prior to construction to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.
6. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Advisements:

1. 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.
2. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. 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/bylaws\\_licences/licences\\_permits/oscam-permit-request.aspx](http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx)

In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. Section 310.5(2)(a) relaxed to allow the excess of 8 bays for a Rapid Drive-through Vehicle Service.
2. Section 54.2, Schedule 1 relaxed to allow the deficiency of 4 parking spaces
3. Section 54.2, Schedule 3 relaxed to allow the deficiency of 2 loading spaces

**Reasons for Decision:**

The Board finds the following:

1. Rapid Drive-through Vehicles Services is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone.
2. General Retail Stores is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone.

3. Section 310.1 of the *Edmonton Zoning Bylaw* states that *the General Purpose of the CNC Neighbourhood Convenience Zone is to provide for convenience commercial and personal service uses, which are intended to serve the day-to-day needs of residents within residential neighbourhoods.*
4. The Board finds that the proposed development is in keeping with the General Purpose of the CNC Neighbourhood Convenience Commercial Zone in that the development is intended to serve the day to day needs of the residents in the nearby residential neighbourhood.
5. The required variances have been granted for the following reasons:
  - a) Transportation Services does not object to the required parking variance, based on a review of the memorandum provided.
  - b) It was the opinion of the Development Officer that granting variances to the parking and loading requirements would not materially affect the use, enjoyment or value of neighbouring lands.
  - c) Based on the evidence provided, the proposed Rapid Drive-through Vehicle Service has one single entrance and exit.
  - d) Section 72.2(5)(b) of the *Edmonton Zoning Bylaw* is used to determine the number of queuing spaces required for a Rapid Drive-through Vehicle Service and states that “a multi-bay single entrance self-service car wash” must provide a required number of queuing spaces that are determined by the number of “bays”.
  - e) The Board therefore finds that the most reasonable interpretation of the term “bay” in Section 310.5(2) of the *Edmonton Zoning Bylaw* is in accordance with the interpretation of the Development Officer.
  - f) The proposed Rapid Drive-through Vehicle Service is a multi-bay single entrance self-serve car wash that includes 9 bays as contemplated by the *Edmonton Zoning Bylaw*.
  - g) The Board has granted the required variance to allow 9 bays for the following reasons:
    - i) The subject site is surrounded on three sides by roadways, including two major arterial roadways.
    - ii) The proposed development is Setback 15 metres from the Apartment building located on the abutting site to the north and the closest residential zone. There is also a parking lot located between the Apartment building and the site of the proposed car wash, which will mitigate any noise concerns generated by the mechanical portion of the proposed development.
    - iii) The proposed development is screened by extensive fencing and proposed landscaping as well as abutting roadways which will mitigate the required variances.
    - iv) Based on the Noise Study submitted by the Appellants, the proposed wand wash car wash will generate less noise than an automated car wash.
    - v) There were no letters of objection received and no one appeared in opposition to the proposed development.
    - vi) It was the opinion of the Development Officer that granting the required variances would not unduly or materially interfere with neighbouring lands.
6. Based on the above, the Board finds that granting all of the required variances 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.

**Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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 5<sup>th</sup> 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. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board