



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 2, 2018
Project Number: 282740922-001
File Number: SDAB-D-18-104

Notice of Decision

- [1] On July 18, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 20, 2018**. The appeal concerned the decision of the Development Authority, issued on May 30, 2018, to approve the following development:

**Erect a Fence @ 2.44 metres in Height in the interior Side Yard
(north side property line)**

- [2] The subject property is on Plan 2768HW Blk 5 Lot 8, located at 9124 - 151 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submission; and
 - One online response in support and one online response opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A - Photographs submitted by the Appellant.
 - Exhibit B - E-mail from M. Stumpf-Allen, Compost Programs Coordinator, City of Edmonton
 - Exhibit C - Business card with police contact information
 - Exhibit D - Photo showing view from Respondent’s kitchen window
 - Exhibit E - Diagram drawn by Respondent’s surveyor depicting existing fence in relation to property line
 - Exhibit F - Photo of material stacked along Respondent’s side of fence
 - Exhibit G - Photo of Respondent’s dogs
 - Exhibit H - Photos of fences that are over 6 feet in height in the vicinity

Preliminary Matters

- [5] 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.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*").

Summary of Hearing*i) Position of the Appellant, D. Kuchelyma for the Jasper Park Community League*

- [8] Mr. D. Kuchelyma, President of the Jasper Park Community League, appeared to voice the concerns of the community. He was accompanied by Mr. B. Kwasnitza, also with the Community League.
- [9] The Community League believes this is an application for a wall rather than a fence. Mr. Kuchelyma used two poles and a banner to demonstrate why an additional two feet in Height would have a significant negative impact. He submits that there would be a significant visual difference between the 6 foot high fence along the south lot line as compared to the proposed 8 foot high fence along the north side of the subject property.
- [10] The Community League is concerned because they have received no specific details regarding the fence such as its exact location, length or construction material.
- [11] The Appellant provided a series of photos (marked Exhibit A) depicting:
- a) The subject site and the existing fence from various angles including the unfinished wall of the Respondent's house which faces the adjacent property to the north;
 - b) Photos of existing 6 foot fences in the area and the privacy they provide;
 - c) The backyards of the subject property as well as the backyard of the immediately affected neighbour to the north showing her deck and garden area; and,
 - d) The Respondent's new fence behind the garage which Mr. Kuchelyma believes is 6 foot 6 inches instead of the permitted 6 feet.
- [12] Mr. Kuchelyma notes that an 8 foot high fence would go above the eaves of a standard garage.

- [13] The subject property is at a higher grade than the two directly adjacent properties. The Appellant is not sure if the Height of the fence will be taken from the landscape height rather than from the half metre mark.
- [14] The Appellant is also concerned about the sun shadowing effects on the property to the north. By Mr. Kuchelyma's calculations, seventy five percent of the north property would not see the sun in December if an 8 foot fence is built. The June sun shade is 4.6 feet for an 8 foot fence versus 3.46 feet for a 6 foot fence. The vegetation growing along the fence of the adjacent property to the north would not see sunlight at any time of the year.
- [15] Mr. Kuchelyma is of the opinion that the Development Officer did not have the authority to vary Height in this case as the conditions stated in Section 49.1(g) of the *Edmonton Zoning Bylaw* were not met:

In the case where the permitted Height of a Fence, wall, or gate is 1.85 metres, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 metres, in order to provide additional screening from public roadways or incompatible adjacent Uses.

Since the subject property is located mid-block screening from public roadways is not required and there is no incompatible adjacent Use.

- [16] The Respondent's amenity area is located on the southwest side of her house so why wasn't an application for an 8 foot high fence made along the south property line rather than just the north property line.
- [17] The Appellant provided the following responses to questions from the Board:
- a) There are currently no other 8 foot fences in the entire Jasper Park community and they are concerned that allowing this one will set a precedent. They are further concerned that such a high fence would shade the property to the north. These concerns are similar to those they would voice for apartment or row house developments proposed for their community.
 - b) The Appellant acknowledged that there are evergreens in the community that are desirable for water retention and shading.
 - c) The Appellant is very familiar with the entire community as it is a very small area of 6 by 8 blocks and he has lived in the community for many years.
 - d) He was not certain as to the exact method of measuring the height of a fence or the height of the grade.
 - e) He acknowledged that the house and garage on the subject property are significantly higher than an 8 foot fence and there would only be a small portion of fence that does not run parallel to the house or the garage. He used one of his photos submitted in Exhibit A to show how high up on the house an 8 foot fence would go.

- f) He calculated that there would be 75 percent sun shading in the northern neighbours yard for December as a 37.6 foot shadow would be cast at that time of the year. On a 50 foot lot that is 75 percent.
- g) He could not confirm if the existing fence ran along the property line or if it was on the Respondent's property.
- h) As a community league, they take a general interest in what is happening in their community. This appeal came about after the executive met and decided that the subject fence would not fall within the criteria set by their community. Not all residents have the expertise to know what they should do if they are not in favour of a development; therefore, it sometimes falls on the community league to file an appeal. The adjacent neighbour to the north was present at this meeting but the owner of the subject property was not present, nor had she been consulted on the matter.
- i) The Appellant agreed that at times the shadow from the subject fence could cast a shadow on the Respondent's home. The sun shadowing impact would vary depending on the time of year and the time of day. The photos which show shadows falling onto the subject site from the northern neighbour's lot in Exhibit A were taken at approximately 7:00 p.m. in July.

ii) Position of Affected Property Owners in Support of the Appellant

- [18] Ms. O. Lukowski, an adjacent neighbour who has lived at her home for 38 years, will be directly impacted by the proposed development.
- [19] She referred to Photos 1 and 9 of Exhibit A. The first fence post in the photo on page 1 as well as the original fence post at the rear of the property in the photo on page 9 are located directly on the property line and are confirmed by the survey pins.
- [20] The existing fence shifted as a result of the basement excavation that occurred when the property next door was developed.
- [21] She feels that the 8 foot fence is proposed out of retaliation for bylaw complaints she made regarding the subject property and ongoing disputes rather than for privacy reasons. She cannot see into the Respondent's amenity area and only sees her neighbours when they travel between their house and their garage. If there were a privacy issue, the fence on the other side would also be 8 feet rather than 6 feet.
- [22] The existing fence is old but is still in good shape. The Respondent does not respect the existing fence and stacks boxes and other material against it.
- [23] Ms. Lukowski provided the following responses to questions from the Board:
 - a) Construction of the subject house began in January or February of 2015.

- b) Ms. Lukowski confirmed she was at the community league meeting where filing this appeal was discussed but she did not participate as that would be a conflict of interest.
- c) The two extra feet of fence would impact her by causing her to feel like she is closed in and would impact her ability to talk to the neighbour to the south of the subject property.
- d) She estimates that her deck is approximately 6 feet above the ground; however, she can't see her neighbours from her deck as her neighbour's house goes well past the end of her deck toward the rear lot line.
- e) She confirmed that as shown in the submitted photos in the afternoon there is shade in her yard from her own garage and in the morning her house shades her backyard.

iii) Position of the Development Officer, Mr. K. Yeung

[24] The Development Authority did not appear and the Board relied on Mr. Yeung's written submission.

iv) Position of the Respondent, Ms. M. Hrehoruk

[25] Ms. Hrehoruk outlined her reasons for requesting an 8 foot high fence.

[26] Her neighbour to the north can look directly into her backyard and has made several bylaw complaints to the City of Edmonton. These complaints resulted in Ms. Hrehoruk having to take time off work in order to meet City of Edmonton inspectors. She acknowledged that at times there were piles of sand and other material present in her backyard but that is the reality of construction.

[27] The north neighbour also called Waste Management to complain about her composter. Again, Ms. Hrehoruk had to take time from work to meet with the Compost Programs Coordinator. She provided a copy of an e-mail from the coordinator, M. Stumpf-Allen, which she received as a result of this meeting (marked Exhibit B).

[28] A complaint was also filed with the City Police about excessive noise from the Respondent's backyard due to talking and singing and from her husband doing construction projects. This resulted in a police officer visiting their home and the neighbour being spoken to. The officer's contact information was provided and marked as Exhibit C. The logical solution would be to elevate the fence to reduce noise impacts and eliminate future complaints.

[29] A photo taken from the Respondent's kitchen window was submitted and marked Exhibit D. The circled area shows where her neighbours often sit in their yard and look into the Respondent's kitchen window or into her backyard. The neighbour's large evergreen tree in the photo brings shade to this sitting area.

- [30] She submitted a surveyor's drawing (marked Exhibit E) which confirms that the existing fence is mostly on the Respondent's property. A small portion of the fence towards the rear of the yard is on the property line.
- [31] Another reason for the high fence is to defend her property. Exhibit F shows building material neatly organized along the existing fence on the Respondent's property. After continually finding the material disorganized and falling down on their flower beds, the Respondents installed cameras which showed the neighbour to the north trespassing on their property and pushing the material over. When they informed the neighbour of their findings, she used a stick to push the material without trespassing.
- [32] The Respondents recently adopted a large rescue dog and would like the high fence to enable them to let the dog into the yard without disturbing the neighbours. They currently keep the dog in the house at all times to prevent further complaints. A photo of the dog was submitted as Exhibit G.
- [33] A series of photos were submitted depicting fences taller than 6 feet in the immediate vicinity (marked Exhibit H).
- [34] Ms. Hrehoruk provided the following responses to questions from the Board:
- a) The retaining wall is required by the City of Edmonton to prevent water damage to the adjacent property. A swale runs on her property along the north side lot line beside the retaining wall and Ms. Hrehoruk intends to install the fence on her side of this retaining wall measured from the ground up and does not intend to touch the existing fence.
 - b) They have been unable to finish the wall of the house running parallel to the north neighbour as they are unable to get permission to lean a ladder against the house – the angle of the ladder would be too steep if the bottom was not in the neighbour's yard.
 - c) They do not have any issues with the adjacent neighbour to the south and therefore have built a 6 foot fence on that side.
 - d) She estimates the north neighbour's deck at between 6 and 7 feet high and estimates the height of the existing fence at 4 feet. Ms. Hrehoruk has never been on this deck so she cannot comment what could be viewed from it.
 - e) Exhibit E (surveyors drawing) was not stamped or signed as she did not pay for a certified document. Her surveyor drew the sketch for her.
 - f) She has owned the subject property since 2010 and the previous home sat empty for a period of time prior to demolition.
 - g) She did not live in the community previously and had no knowledge of the Community League meeting where the decision to appeal was made. The property owner two doors to the north came and spoke with her about the appeal when notified

of it by mail. That person expressed their support for her fence and voiced concern about their shared neighbour. This person recently sold their property and is no longer living there.

- h) She believes that the extra two feet in fence height would help with noise and would prevent her neighbour from looking directly into her yard. She believes that her neighbours may still be able to look into her kitchen window when sitting in their yard if the fence were only 6 feet high.

v) *Rebuttal of the Appellant*

- [35] The fences shown that are higher than 6 feet are not within the Jasper Park community. They are in the community to the north.
- [36] Mr. Kuchelyma also questions the surveyor's drawing as it has not been certified.
- [37] A 6 foot fence is adequate for privacy. Mr. Kuchelyma is 6 foot one and cannot see overtop of a 6 foot high fence. He could not comment on whether he would be able to see into the Respondent's kitchen window if the fence was only 6 feet high.
- [38] He does not believe there would be any difference regarding noise attenuation between a 6 and an 8 foot high fence.
- [39] Mr. Kuchelyma agrees that from what he has heard today there are more issues than just a fence but as far as the community league is concerned the issue is the height of the fence. Their position is that this fence would set a precedent and would have a negative impact on the entire community.

Decision

- [40] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

- [41] A Fence is an accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [42] Section 49.1(g) of the *Edmonton Zoning Bylaw* states:

In the case where the permitted Height of a Fence, wall, or gate is 1.85 metres, the Development Officer may vary the Height of the Fence, wall, or gate to a

maximum of 2.44 metres, in order to provide additional screening from public roadways or incompatible adjacent Uses

The Board finds that the Development Officer made an error in using his discretion to vary the Height of the Fence in this case because the two adjacent Uses are both Residential and are, therefore, compatible.

[43] However, the Board would allow the Height variance, pursuant to its power, as per Section 687(3)(d) of the *Municipal Government Act* which states:

The subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[44] The Board was presented evidence from the Community League that they had discussed this issue at a community league executive meeting where the adjacent neighbour was present but did not participate. They admitted they had not contacted the Respondent prior to submitting this appeal. The Board is concerned that the Community League is representing one individual in the community and not the total community in this regard.

[45] The Board heard extensive evidence that went beyond the scope of the current appeal outlining the animosity between the property owners of the subject site and the affected neighbours to the north.

[46] The Community League presented measurements of fence heights; however, upon questioning, it was determined that the measurements that were provided may not have been correct, and cannot be relied upon. The Community League also had concerns about sun shadowing but did not provide conclusive evidence through the use of a sun shadow impact study nor any expert reports on the same topic.

[47] The Community League representative also submitted that the grade of this subject lot was considerably higher than the adjacent one. However, the Lot Grading Plan report indicates that the contrast between the two lots is minimal.

[48] The Community League stated that this would be the first 8 foot fence within the Jasper Park Community League. However, because this fence runs along a side lot line between two properties, the Board is of the opinion that the community as a whole would not be impacted by the fence as it would only be visible to the two affected neighbours.

- [49] The Board is not strictly bound by precedent. It must consider each development on its own unique merit and has done so in this case.
- [50] While the Board recognizes that a two foot variance in Height may be significant, such a variance is lessened in this case given the unique recessed location of the affected neighbour's deck. The affected neighbour's deck is already closed in by the House on the subject property and the Height would not otherwise negatively impact any views from the deck. The Board acknowledges that the House on the subject site, which is allowed and approved, is large and this would be more of a contributing factor to the concerns raised by the affected neighbour than the fence itself.
- [51] The location of the rear detached garages on the subject site and the neighbour's lot further lessens the potential massing impact of the fence.
- [52] While the Board notes the Community League's concern regarding sun shadowing over the adjacent northern neighbour's yard for the growing season, the photographic evidence provided by the Community League suggests that the sun shadow would be cast on the subject site rather than the affected neighbour's yard, contrary to their argument.
- [53] The Board is of the opinion after weighing all evidence presented that having an 8 foot fence would positively enhance the privacy between the two neighbours while ensuring the containment of the Respondent's dog.
- [54] The Board notes that the increased fence Height may act to dampen sound such as laughing or singing which was of concern to the affected neighbour.
- [55] Therefore, based on the above, the Board finds that the proposed 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.

Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. R. Hachigian; Ms. M. McCallum; Mr. L. Pratt

CC: Jasper Park Community League
City of Edmonton, Development & Zoning Services – K. Yeung / A. Wen

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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July 18, 2018

301, 1103 – 95 Street SW
Edmonton, AB T6X 0P8

RE: SDAB-D-18-103 / Project No. 270028546-002, to leave as built a Single Detached House, located at 2674 – Maple Way NW

The Subdivision and Development Appeal Board made and passed the following motion on July 18, 2018:

“That SDAB-D-18-103 be TABLED to August 9, 2018, at the written request of the Appellant and with the written consent of the Respondent.”

Reasons For Decision:

1. The Appellants advised they are unable to attend the hearing scheduled for July 18, 2018.
2. This is the first postponement request made by the Appellant and the Respondent has provided their written consent to this request.

The time and location of the hearing will be provided in future correspondence.

Should you require further information in this regard, please contact the Subdivision & Development Appeal Board Office at 780-496-6079.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

cc: City of Edmonton, Development & Zoning Services, Attn: Ms. E. Lai / Mr. A. Wen



**EDMONTON
TRIBUNALS**

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Date: August 2, 2018
Project Number: 224518430-025
File Number: SDAB-D-18-100

Notice of Decision

- [1] On July 18, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 19, 2018**. The appeal concerned the decision of the Development Authority, issued on June 19, 2018, to refuse the following development:

Change the Use from General Retail Stores to Child Care Services (78 Children).

- [2] The subject property is on Plan 0423131 Blk 1 Lot 1, located at 16720 - 76 Street NW, within the (CNC) Neighbourhood Convenience Commercial Zone. The Edmonton North Area Structure Plan and the Schonsee Neighbourhood 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.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A previous SDAB decision SDAB-D-15-285

Preliminary Matters

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

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, 1977253 Alberta Ltd.*

[8] Mr. Z. Umarji and Mr. M. Umarji appeared on behalf of the Appellant. They are both Directors of 1977253 Alberta Ltd.

[9] They familiarized the Board with the subject location by showing an overhead shot of the development which is surrounded by (RF1) Single Detached Residential Zone. The proposed development (Building A) is located on the far west corner of the site which is 60 metres away from an existing gas bar.

[10] In their opinion, the proposed development meets or exceeds the requirements of the *Edmonton Zoning Bylaw* and addressed the Development Officer's three reasons for refusal.

[11] Reason 1: Section 80.2.a(v) - No portion of a Child Care Services Use, including the building bay and on-Site outdoor play space, where provided, shall be located adjacent to a building bay with an approved development permit for Rapid Drive-through Vehicle Services.

[12] The Development Officer indicated that even though the Child Care Service and the play space are not adjacent to the building bay of the Rapid Drive-through Use, the location of the drive aisle of the car wash creates a safety concern. Section 80.2.a(v) is a location requirement only for a Rapid Drive-through Use building and does not refer to drive aisles. The drive aisle is only an issue as it services the car wash. If it serviced a business such as a Tim Hortons, or an underground parkade, it would not be an issue.

[13] Tab 8 of the Appellant's submission contains e-mail correspondence indicating the Development Officer's concern with the car wash use. She initially referred to it as a Minor or Major Service Station which would require a 50 metre separation distance from the proposed development. It was later understood that the car wash is actually deemed as a Rapid Drive-through use; therefore the 50 metre separation requirement is incorrect.

[14] They referred to Tab 5 of their written submission which contains examples of existing Child Care Services within the City which abut drive aisles.

- a) Smart Choice Daycare located at 12138 – 161 Avenue NW abuts Dunluce Car wash
- b) Bright Path Daycare located at 850 Webber Greens Drive NW. The play area at this facility abuts a DQ Chill and Grill queuing lane and is only partially separated by shrubs and is below the required 50 metres from a gas station (48.11 metres).

- c) Canada Place Child Care Society Daycare. The play area abuts a round-about for vehicle traffic as well as an exit lane from the parkade.
 - d) Manning Crossing Daycare located at 640 Manning Crossing is surrounded on a few sides by Rapid Drive-through Use.
- [15] They are proposing a barrier between the drive aisle and the proposed development by installing 15 concrete filled steel bollards and a 10 inch precast panel.
- [16] Reason 2: The location of the outdoor play area is immediately adjacent to rear yards of existing single detached houses. The applicant has not demonstrated that noise impacts to the abutting residential lots have been mitigated to the satisfaction of the Development Officer.
- [17] They referred to a diagram under Tab 3 which shows the current view of the affected neighbours to the north and west. The change of use to Child Care Services would not change this view. The proposed childcare will be screened with a landscaped berm.
- [18] In addition to the landscaping and a five foot high berm, a PVC noise wall will be installed over the wooden fence panels providing an STC sound transmission rating of 36. This rating falls between STC 35 – loud speech heard, but not understood and STC 40 – loud speech now only a murmur.
- [19] Neighbours they spoke with were happy to hear that the operating hours would be similar to business hours (6:30 a.m. to 6:00 p.m. – Monday to Friday). A fully enclosed area behind the proposed development provides additional security.
- [20] They referred to Tab 7 of their written submission which shows examples of existing Child Care Services located next to a residential area.
- a) Gold Start Daycare at 16648 – 71 Street.
 - b) Kinder Kollege Daycare at 16538 – 59 A Street.
 - c) Manning Crossing Daycare at 640 Manning Crossing. The landscaping at this site is similar to that of the proposed development.
- [21] Reason 3: The proposed location of the passenger pick-up/drop-off spaces require children to cross the main access drive aisle of the site, and the queuing drive aisle for the Rapid Drive-Through Vehicle Service facility, which creates a safety concern and is contrary to Section 54.2 Schedule 1(31) and 80(2)(d).
- [22] Three main pick-up / drop-off stalls are directly in front of the proposed facility. An additional six stalls will be located across the parking lot with the furthest stall being less than 35 metres from the main entrance of the Child Care Services. There will be a marked crosswalk from these additional six stalls to the main entrance and speed bumps

will be installed in the main drive aisles. There will be traffic control at the entrance and exit to the car wash facility.

- [23] In their experience pick-up and drop-off times vary throughout the day with out of school care children arriving later in the day. Each child is accompanied by a parent or staff member when entering or exiting the facility.
- [24] There was some confusion as to which numbered section of the *Edmonton Zoning Bylaw* stipulates the parking stall requirements for Child Care Services. The Board determined that the Development Officer quoted the correct section of the *Edmonton Zoning Bylaw* in her refusal; however, the numbering was amended recently from section 54.2, schedule 1(A)(31) to schedule 1(A)(32).
- [25] The Appellants acknowledge that the Board is not bound by previous decisions, however, the Board has allowed pick-up and drop-off stalls to be located across a roadway in the past as referenced in SDAB-D-15-285 (*Exhibit A*). Paragraph 43 of this decision reads:

The Board has considered that the roadway that must be crossed is not an arterial road, and it is the Board's view that it can be traversed safely by children accompanied by parents. Furthermore, it will be predominantly the staff who will use the designated Accessory parking spaces.

- [26] In their opinion, the proposed development meets the General Purpose of the (CNC) Neighbourhood Convenience Commercial Zone:

The purpose of this 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.

The proposed Child Care Services adds to the neighbourhood and 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.

- [27] The Appellants provided the following responses to questions from the Board:
- a) This subject building was approved in 2016 and is currently under construction.
 - b) The bylaw specifically states that a Child Care Services may not be located next to a building bay with an approved Rapid Drive-through. If it were intended that the Child Care Service was not to be located adjacent to a drive aisle and queuing lane, the bylaw would have been worded to state this.
 - c) The differences between the subject drive aisle and a Tim Horton's drive aisle are that the Tim Horton's drive aisle would be used much more frequently and would not be separated from an adjacent use by a precast steel panel and concrete filled steel bollards.

- d) The Smart Choice Daycare and Manning Crossing Daycare referenced under Tab 5 have pick-up / drop-up stalls located next to drive aisles. They do not know if any variances were granted and do not know the zone that the Smart Choice Daycare is located in. The Manning Crossing Daycare is in a DC2 Site Specific Development Control Provision zone.
- e) The after school care children would be transported to the proposed development in a smaller bus which would drop them off at the main entrance. Based on their operational experience these three drop-off / pick-up stalls would not typically be occupied when the after school care drop-offs occur.
- f) They will not be transporting any children to school during the morning hours; this service will only be offered for afternoon kindergarten. Older children go directly to school in the morning and only attend the daycare after school is over.
- g) The hours of operation for the car wash are 8 a.m. to 10 p.m.
- h) There is adequate parking for Buildings A, B and C based on current Uses including a space to park the bus when not in use. 19 stalls are dedicated to the Child Care Service; the change of use is not impacting the overall parking requirements.
- i) They have no concerns with any of the suggested conditions of the Development Officer should this development be approved.

ii) *Position of the Development Officer, Ms. J. Kim*

[28] The Development Authority provided a written submission and did not attend the hearing.

Decision

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

Reasons for Decision

[30] Child Care Services is a Discretionary Use in the (CNC) Neighbourhood Convenience Commercial Zone. This particular Discretionary Use is also subject to unique locational development regulations in sections 80(2)(a)(v) and 80(2)(d) of the *Edmonton Zoning Bylaw* which deal with compatibility and safety.

- [31] The Board's primary reason for refusal is safety. The Board notes that there are two vehicle intensive Uses on the subject Site including a Gas Bar and an eight-stall Car Wash serviced by eight queuing spaces. Six out of nine pick-up/drop-off spaces are located adjacent to one of only two entrances to the subject Site meaning that children and parents would be required to traverse through the main drive aisle from 167 Avenue.
- [32] The site plan specifies that six of the pick-up/drop-off spaces are located directly across from the exit to the car wash. This creates an extra hazard given the proximity of cars exiting the car wash and parents trying to enter and back out of their designated stalls. It also is an additional hazard when parents using these spaces walk their children to and from the Child Care Services as they would have to cross the paths of drivers entering the carwash, drivers exiting the car wash as well as any other drivers entering or exiting the site from 167 Avenue for the other on site uses.
- [33] The Board notes that although the Gas Bar exceeds the minimum 50-metre separation distance requirement, Vehicles using the Gas Bar and the Car Wash will be driving between the walking area to enter or exit 167 Avenue or 76 Street.
- [34] In addition, the Car Wash queuing aisle and exit are approximately 20 feet from the main entrance of the Child Care Service.
- [35] The Board also noted that the Appellants mentioned extra safety prevention items that they were willing to include, such as speed bumps, 15 concrete-filled steel bollards and a 10 inch precast panel. However, they were not on the plans that had been considered by the Development Officer and in addition, the Board found that these were not precautions that would mitigate the safety hazards presented with this site plan.
- [36] The Appellants suggest that families parking in this area may traverse the entrance from 167 Avenue and then safely use the sidewalk. However, this is an indirect route and it crosses a two-way vehicle access and egress point through the subject Site which will pose a safety hazard for children.
- [37] Overall, the Board concurs with the opinion of the Development Officer that the proposed Use is not reasonably compatible with surrounding uses for the reasons set out in her written report which state at pages 2-3:

“Notwithstanding that the building for the proposed Child Care Service is not adjacent to the building bay of the Rapid Drive Through Vehicle Service the drive aisle for the queuing spaces is adjacent to the building bay of the Child Care Service. In the opinion of the Development Officer, this locational scenario to the Child Care Service would create even more of a safety concern than the building bay adjacent to the Rapid Drive through Bay.

...

The proposed location of the passenger pick-up/drop-off spaces require children to cross the main access drive aisle of the site, and the queuing drive aisle for the Rapid Drive Through Vehicle Service facility and the exit drive aisle of the Rapid Through Vehicle Service facility which creates a safety concern and is contrary to Section 54.2 Schedule 1(31) and 80(2)(d).”

- [38] Therefore, the Board finds that this vehicle oriented Site, with a Gas Bar and an eight stall Rapid Drive-through Vehicle Use and queuing lane is incompatible with the proposed Child Care Service.
- [39] The Appellants showed photographs of other Child Care Services adjacent to drive aisles and an approved SDAB decision from 2016. However, these examples were not persuasive for two reasons. First, the existence of other developments with some similarities or apparently comparable variances is not necessarily a planning reason to approve the proposed development on the subject Site. The Board is not bound by precedent and considers each case on its own merits. Second, the Board did not receive complete evidence about details such as when most of these developments were approved; the applicable regulations at the time of approval; the legal status of the developments; where the pick-up/drop-off spaces were located; the Zoning information or complete information on the points of access to the Sites. The Board notes that the prior decision cited by the Appellants involved the conversion of a Single Detached House to a Child Care Services Use in a residential zone and was distinguishable from the present appeal.
- [40] Based on the above, the Board concluded that the proposed development is not reasonably compatible with the surrounding development and there are site specific planning reasons to refuse waiving section 54.2, schedule 1(A)(32) and section 80.2(a) and (d) of the *Edmonton Zoning Bylaw* based on safety concerns.
- [41] Given the Board’s finding with respect to safety, it did not consider the other noise related reasons cited by the Development Officer for refusing this application.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. R. Hachigian; Ms. M. McCallum; Mr. L. Pratt

cc: City of Edmonton, Development & Zoning Services – Ms. J. Kim / Mr. H. Luke

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 the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.