



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 11, 2016
Project Number: 188307978-001
File Number: SDAB-D-16-177

Notice of Decision

- [1] On July 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on July 2, 2016. The appeal concerned the decision of the Development Authority, issued on June 22, 2016, to refuse the following development:

To convert a Single Detached House to a Child Care Service Use (49 Children) and to construct interior and exterior alterations (convert attached garage to usable floor space and construct an outdoor landing 1.0 metres by 1.0 metres @ 1.47 metres in height with ramp)

- [2] The subject property is on Plan 5229AD Blk 26 Lot 1, located at 9650 - 153 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Jasper Place Area Redevelopment Plan apply 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, correspondence from Fire Rescue Services and Transportation Planning and Engineering, and the refused Development Permit;
- Copy of the Registered Mail receipt confirming delivery of the refusal decision, signed and dated June 24, 2016;
- Development Officer's written submissions, dated July 21, 2016;
- Appellant's written submissions, submitted via email dated July 26, 2016; and
- Written submissions from the West Jasper Sherwood Community League, received July 27, 2016.

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, Sharda Consulting Inc.*

- [6] The Appellant was represented by Mr. R. Sharma.
- [7] As per his written submissions, dated July 26, 2016, he expressed the view that the variance required for the maximum Site Coverage is minimal. He understood that a portion of the proposed fence exceeds the maximum height, and he is prepared to lower the fence height to 1.2 metres if needed. He noted that the Transportation Department expressed no concerns with respect to the proposed parking.
- [8] When questioned by the Board about the parking plans, Mr. Sharma expressed the opinion that the proposed tandem parking will not be problematic, as staff will park in the spaces nearest the building, leaving the tandem spaces abutting the lane available for drop-off parking. If necessary, he is prepared to provide a transport vehicle to bring staff to and from the property. When the Board questioned the potential safety concerns of the congested pick-up/drop-off area for young toddlers, Mr. Sharma explained that a ramp will be installed to assist employees with toddler pick-up/drop-off.
- [9] Mr. Sharma also stated that there are nearby child care services that provide less parking spaces than his proposed development. Two of these comparables provide services for up to 49 children, located along 100 Avenue and 162 Street, and 149 Street and 92 Avenue. A third property provides services for up to 39 children on 103 Avenue and 104 Street. When questioned by the Board, Mr. Sharma was unable to identify the zones in which these properties were located, but it was his view that due to their external appearances, these properties must be zoned residential.
- [10] Referring to some of the concerns expressed by neighbouring property owners in their written submissions, the Board questioned whether a development with 49 children and 10 staff members coming and going on a daily basis is compatible with a neighbourhood in the RF1 Zone. Mr. Sharma stated that the development's peak traffic periods will be restricted to 6:00 a.m. to 7:00 a.m. in the morning, and evenings after school ends.
- [11] When questioned about the removal of existing trees on the property, Mr. Sharma stated that he will attempt to retain as many trees as possible, but some trees will need to be removed to provide parking spaces. The trees in the proposed play area will be prioritized.

ii) Position of the Development Officer, Ms. C. Li

- [12] Ms. Li stated that the area in which the three comparable properties provided by Mr. Sharma is the downtown area, located near the new arena. From her recollection, there are no Single Detached Houses in that area. She believes that the properties in that area are all high rise buildings, with a mix of apartment complexes and businesses. Upon questioning by the Board, Ms. Li was unable to confirm whether the three comparables submitted by Mr. Sharma had approved permits or the number of children at those locations.
- [13] Ms. Li acknowledged that Child Care Services is a Discretionary Use within the RF1 Single Detached Zone, and therefore, various factors are taken into consideration when determining the appropriateness of the proposed Use within the neighbourhood. In this case, she considered the general purpose of the RF1 Zone, which is to provide for Single Detached Housing. The subject development is located on a small lot, and her primary concern was with the overdevelopment and high intensity use of the Site. In her view, the proposed outdoor play space for up to 49 children in both the front and flanking yard will create noise problems. In addition, the high traffic volume that will be generated during pick-up and drop-off periods will impact neighbouring properties.
- [14] Upon questioning by the Board, Ms. Li confirmed that she would not grant the variance for tandem parking, given the size of the lot, and the safety concerns with respect to access for emergency vehicles. She acknowledged that Transportation Services has expressed no concerns for the proposed parking. However, she explained that Transportation Services typically focus its review on whether the proposed parking can serve the business, with no consideration of other aspects such as the safety concerns which have been raised.

iii) Position of Affected Property Owner in Opposition to the Development, Mr. C. Geddes

- [15] Mr. Geddes stated that the subject property was previously a rental property that caused various nuisances, including noise complaints resulting in police visits. He has experienced relief from these problems since the property was sold, but he is now concerned that the proposed development will result in a different type of noise generated by children playing in the yard.
- [16] Mr. Geddes also expressed concerns about the proposed tandem parking leading off the rear lane. Waste pickup and removal occurs on the rear lane, and another development further down the road has also impacted the rear lane access. Further, it was his view that the proposed parking plan will impede the access of emergency vehicles to the proposed development.
- [17] Upon questioning by the Board, Mr. Geddes clarified that there are no parking restrictions along 97 Avenue. However, there is no sidewalk along the portion of 97 Avenue which the proposed development is located on.

iv) Position of Affected Property Owner in Opposition to the Development, Ms. B. Wonago

- [18] Ms. Wonago stated that her home is located kitty-corner from the proposed development, and she will be impacted by the noise generated by children playing in the proposed playspace located in the front yard and flanking side yard.
- [19] She stated that there is a day home further down the street on 97 Avenue and 155 Street, as well as a daycare located in nearby Sherwood School. The daycare located in Sherwood School also utilizes the same green space (Arthur Elliott Park) which the proposed development also intends to use.
- [20] It was her view that the proposed parking plans will present a safety concern for the children. The portion of 97 Avenue located between 149 Street and 156 Street is a busy thoroughfare, and it is widely used by drivers attempting to avoid the school located between 95 Avenue and 96 Avenue. The area also experiences comparatively high emergency vehicle access,
- [21] Upon questioning by the Board, Ms. Wonago clarified that 97 Avenue is not an arterial roadway. However, it was her view that the proposed development will impact the existing parking and traffic stresses. In addition, there is a bike path along the north side of 97 Avenue, with signs that restrict use of the path to bicycles, further making the proposed parking plan unsuitable for the Site.

iv) Position of the West Jasper Sherwood Community League, (the "Community League")

- [22] The Community League was represented by Ms. I. Blain, Civics Director.
- [23] Ms. Blain submitted five photographs which depicted the subject development and surrounding areas. Included in the photographs was a Google Maps satellite image of the public facilities within the West Jasper Sherwood community. Ms. Blain explained that the Arthur Elliott Park and the adjacent playground, which the Applicant has stated that he will utilize, is the only useable green space within the neighbourhood. Much of the other recreational space is taken up by a hockey rink, two tennis courts, a basketball court is converted into a skating rink in the winter time, and the community league building itself.
- [24] Ms. Blain referred to Section 3.2 of the Jasper Place Area Redevelopment Plan ("Jasper Place ARP") with respect to the Interpretation of the Land use policies laid out in the ARP (page 22), which states:

Land use policies are generally focused on the built form of new development. Residential-Related Use Classes and Community, Educational, Recreational and Cultural Service Use Classes are supported throughout Jasper Place, *provided they are in scale with the relevant land*

use area, and that any anticipated traffic, noise, or nuisance impacts can be effectively mitigated. [emphasis as per Ms. Blain]

- [25] West Jasper Place is challenged with very little park space, with only 1.46 hectares for the approximately 3000 residents. Portions of the available green space consist of hills, which are not particularly useable by residents. Consequently, neighbourhood residents appreciate and heavily use the green space that is available. The Community League takes the position that neighbourhood residents' enjoyment of the neighbourhood amenities should be prioritized over non-residents.
- [26] Ms. Blain also submitted that many of the toddlers served by the proposed development will be non-residents. In support, she stated that the neighbourhood does not have many young families, and that the existing dayhomes and daycares cater to non-residents. She also spoke with the daycare located in Sherwood School, which confirmed that the majority of its clients do not live in the neighbourhood.

v) *Rebuttal of the Appellant*

- [27] Upon questioning by the Board, Mr. Sharma clarified that the peak drop-off time will be 7:00 a.m. to 8:00 a.m., and not 6:00 a.m. to 7:00 a.m. as previously stated. Peak pick-up time will be 5:00 p.m. to 6:00 p.m. Mr. Sharma stated that he would be amenable to a condition on the permit, restricting pick-up and drop-off hours to those periods.
- [28] He explained that his wife has a Bachelor of Education and will be serving as a Director. She will be on-site most of the time. He and his wife live in the nearby community of Lewis Estates, and will be driving to the Site. He does not believe that many of the staff will drive to the Site.

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 RF1 Single Detached Residential Zone.
- [31] Since the proposed development is a Discretionary Use, the Board must consider its compatibility with adjacent properties as well as the existing neighbourhood uses surrounding the development. When considering this development specifically, the Board notes that the property is located in the RF1 Zone, which provides for primarily low density uses. The Board is of the view that the intensity of use anticipated for this development, with up to 49 children of toddler age, is significant and incompatible with the surrounding area.

- [32] The Board notes that the Appellant has indicated that he will not be residing in the subject property, and that the Site will be converted entirely into a daycare. For this reason, the Board has determined that the proposed development is commercial in nature, and therefore incompatible with the surrounding residential neighbourhood.
- [33] The proposed development also requires several variances, and it is the Board's opinion that these variances add to the intensity and use of the property. The Board accepts that 97 Avenue is a major thoroughfare, and although it is not an arterial road, much traffic from the surrounding areas is redirected to this road due to driver habits. The Board also accepts the information provided with respect to the existing stresses along 97 Avenue, including the lack of sidewalk along the southern portion of this road, which the proposed development is located on. The northern portion of 97 Avenue also has a dedicated bicycle path as marked by signage. For the above reasons, the Board finds that the required variances will exacerbate pre-existing traffic and parking stresses.
- [34] The Board received letters of opposition from property owners within the 60 metre notification area. Two of these writers appeared in opposition, as did the Community League. The Board was persuaded by the submissions of the Community League with respect to the applicability of the West Jasper Place ARP, which states at page 22 that uses such as Child Care Services "are supported... provided they are in scale with the relevant land use area, and that any anticipated traffic, noise, or nuisance impacts can be effectively mitigated."
- [35] The Board heard from the Applicant that noise impacts from children playing in the yard will be mitigated by bringing the children to the park across the street. However, the Board heard from the Community League that the community's park space is already under stress and overused. The Board accepts that there is relatively little useable public space, given the pre-existing buildings, school, and recreational facilities that have already been constructed. The topography also further limits the available green space. The Board also heard that the existing daycare located in the Sherwood School, as well as the school itself, also uses the same park facilities. For these reasons, the Board finds that the proposed development has not effectively mitigated the anticipated noise and nuisance impacts upon neighbouring properties.
- [36] Finally, the Board accepts the submissions of the Community League with respect to the demographics of its clientele, that is, the children who will use its services will be primarily non-residents. The Board is of the view that the development will result in more non-residential traffic, and that the proposed parking plan does not effectively mitigate the anticipated traffic impacts.

[37] For the above reasons, the Board finds that the proposed development will result in an increase in the intensity of use not only for the subject Site, but for the existing amenities of the neighbourhood, and will therefore have a significant impact upon the use and enjoyment of these amenities. As such, the appeal is denied and the development is refused.

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

Board members in attendance: Ms. K. Cherniawsky, Ms. C. Chiasson, Mr. R. Handa, Ms. D. Kronewitt Martin

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. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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



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SDAB-D-16-178

Application No. 221424956-001

An appeal to construct (1) Freestanding Off-premises Sign (3 metres by 6.1 metres facing NW and SE) (PATTISON OUTDOOR ADVERTISING), located at 10410 – Allendale Road was **WITHDRAWN**



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Date: August 11, 2016
Project Number: 188163171-001
File Number: SDAB-D-16-179

Notice of Decision

- [1] On July 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on July 5, 2016. The appeal concerned the decision of the Development Authority, issued on June 6, 2016, to approve the following development:

To construct an Automotive and Minor Recreation Vehicle Sales / Rentals building (Car Corner Automotive Centre)

- [2] The subject property is on Plan 7720215 Blk 25 Lot 24, located at 4939 - 127 Avenue NW, within the DC2 (908) Site Specific Development Control Provision.
- [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 July 20, 2016;
 - Correspondence from Fire Rescue Services;
 - Various emails exchanged between the Appellant and administrative staff of the Board; and
 - Appellant's submissions, received on July 27, 2016.

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] Prior to opening the hearing to address the substantive matter under appeal, the Presiding Officer drew attention to the appeal requirements under the *Municipal Government Act*, RSA 2000, c M-26, specifically Section 686(1)(b), which states:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

...

(b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

[6] The land use bylaw is the *Edmonton Zoning Bylaw 12800*. Section 20.1 of the *Edmonton Zoning Bylaw* provides the notification criteria with respect to approved Class B development permits. Section 20.1 states:

20. Notification of Issuance of Development Permits

20.1 Class B Development

1. Within seven days of the issuance of a Development Permit for Class B Development, the Development Officer shall dispatch a notice by ordinary mail to:
 - a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land, wholly or partly within a distance of 60.0 m of the boundary of the Site;
 - c. the President of each Community League operating within the notification boundaries described in clause (b), above; and
 - d. the President of each Business Revitalization Zone Association operating within the notification boundaries described in clause (b) above.
2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.
3. Within 10 days of the issuance of a Development Permit for Class B Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating his decision, and the right to appeal therefrom.

[7] The Board noted that the proposed development was approved on June 6, 2016, and that the Appellant filed her notice of appeal on July 5, 2016, which would appear to be outside the 14 days filing period. The Board invited the parties to provide information with regard to this preliminary matter.

i) *Position of the Appellant, Ms. J. Ward*

[8] Ms. Ward stated that she did not receive a letter about the proposed development, and that she heard about it from a neighbour on June 27, 2016. Following this date, she sought to obtain further information about the development and the appeal, ultimately filing her Notice on July 5. She noted that July 1 was a public holiday, and that she was out of town at the time. A neighbour filed the appeal on her behalf.

[9] Ms. Ward also noted that she spoke with the community league, who was not aware of the proposed development. It was her understanding that the community league also had not received a notice letter.

ii) *Position of the Development Officer, Mr. P. Kowal*

[10] Mr. Kowal explained that mail-outs and publications of notices are completed by Notification Agents and not by Development Officers. He spoke with a Notification Agent, who assured him that the notice was completed correctly. The question as to whether the owner of the subject Site or the President of the Business Revitalization Zone Association operating within the 60 metre notification area received their notice letters is not at issue.

[11] Mr. Kowal submitted Exhibit "A", a screenshot of the City's internal document management system, which shows that the newspaper publication "job" was completed on June 14, 2016. To his knowledge, the letters with respect to notice were mailed on June 9, 2016.

[12] Upon questioning by the Board, Mr. Kowal stated that he did not have any documents with respect to the notice requirements, but should the Board require them, he could obtain them from his work computer.

[13] The Board agreed to a brief recess, as it was of the view that this information would assist with determining whether the notification requirements under the *Edmonton Zoning Bylaw* and the *Municipal Government Act* had been met.

[14] After a brief recess, the Board reconvened the hearing and Mr. Kowal submitted Exhibit "B", a copy of the letter which would have been mailed to Ms. Ward, dated June 9, 2016. The address on this letter was the same as that which Ms. Ward used to file her notice of appeal. Mr. Kowal also provided a copy of the letter addressed to the Community League.

[15] Upon questioning by the Board, Mr. Kowal stated that it was his understanding that the description of the development in the newspaper publication would be the same as that which is provided in the notice letter that is mailed to all property owners within the 60 metre notification area.

iii) Position of the Respondent, William Ross Architect

[16] The Respondent was represented by Mr. B. Ross. Mr. Ross provided no submissions with respect to this preliminary matter.

iv) Rebuttal of the Appellant

[17] Ms. Ward submitted that the dates provided by the Development Officer are not necessarily concrete dates, as the delivery of mail could be affected by various factors.

[18] Upon questioning by the Board, Ms. Ward confirmed that the address of the notice letter submitted as part of Exhibit "B" is the correct address for her current residence.

[19] Ms. Ward stated that she is completing home renovations at her unit located on 4707 – 126 Avenue, and during this period, she is residing elsewhere. However, once renovations are completed, she will move back into her unit. She explained that she learned of the development from a neighbouring unit owner when she stopped by her unit to check on the renovation work.

[20] During the course of this conversation, she was made aware that the deadline for filing the appeal was the next day, June 28, 2016. She immediately contacted the administrative staff of the Subdivision and Development Appeal Board, and engaged in a series of email communications with respect to the process for filing an appeal.

[21] Ms. Ward submitted that the Board should take into consideration the fact that she did not receive notice of the development until June 27, 2016.

Decision

[22] The Development Authority provided notice of the issuance of the permit in accordance with Section 20.1 of the *Edmonton Zoning Bylaw*. The Appellant filed the appeal outside of the 14 days statutory time limit as set out under Section 686(1)(b) of the *Municipal Government Act*.

[23] Accordingly, the Board does not have the jurisdiction to hear this appeal.

Reasons for Decision

[24] Section 686(1)(b) of the *Municipal Government Act* provides, in part, that any person affected by a decision of the development authority may appeal to the subdivision and

development appeal board “within 14 days... after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.”

- [25] Accordingly, the Board must first determine whether the development authority provided notice in accordance with the *Edmonton Zoning Bylaw*.
- [26] The proposed development is a Class B Development. Section 20.1 of the *Edmonton Zoning Bylaw* sets out the notice requirements for approved Class B Development Permits.
- [27] The Board was presented with Exhibit “B”, copies of letters that were mailed to the Community League and the Appellant, dated June 9, 2016. The Board notes that the notice requirements under Section 20.1(1) of the *Edmonton Zoning Bylaw* does not require receipt of the notice. It merely provides, in part, that “Within seven days of the issuance of [the Development Permit], the Development Officer shall dispatch a notice by ordinary mail”. The Board accepts that the Development Permit was issued on June 6, 2016, and that the notices were mailed on June 9, 2016, well within the seven days as required under Section 20.1(1).
- [28] However, the enquiry does not end here. Section 20.1(3) also provides that within 10 days of the issuance of the Development Permit, the Development Officer must publish notice of the development and the right to appeal in a daily newspaper circulating within the City. The Board reviewed Exhibit “A”, and accepts that newspaper publication was completed on June 14, 2016, which is within 10 days of June 6, 2016, the date that the Development Permit was issued.
- [29] Having accepted that notice via ordinary mail and newspaper publication were completed as required under Section 20.1(1) and (3) of the *Edmonton Zoning Bylaw*, the Board must also be satisfied that the description of the development and the right to appeal that decision meets the requirement set out under Section 20.1(2). The Board reviewed Exhibit “B”, and is of the view that the notice letter accurately describes the proposed development, its location (both the municipal address and the legal description), and the right to appeal. The Board accepts the submissions of the Development Officer that the newspaper publication notice would be the same as the information provided in the notice letters. Accordingly, the requirement under Section 20.1(2) is also met.
- [30] Based on the above, the Board finds that notice pursuant to the land use bylaw, the *Edmonton Zoning Bylaw*, was completed on June 14, 2016, which is the date that the Development Authority completed the entirety of its notification requirements pursuant to Section 20.1(2). As such, the Appellant had 14 days from June 14, 2016, to file her Notice of Appeal, pursuant to Section 686(1)(b) of the *Municipal Government Act*. The deadline to file her appeal therefore fell on June 28, 2016.

[31] As the Appellant filed her appeal on July 5, 2016, the appeal was filed outside the statutory time limit, and this Board therefore has no jurisdiction to hear this appeal.

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

Board members in attendance: Ms. K. Cherniawsky, Ms. C. Chiasson, Mr. R. Handa, Ms. D. Kronewitt Martin

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