

Edmonton Subdivision and Development Appeal Board

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Date: June 19, 2015
Project Number: 168690480-001
File Number: SDAB-D-15-120

Notice of Decision

This appeal dated May 12, 2015, from the decision of the Development Authority for permission to:

Convert a Single Detached House into a Child Care Services Use (maximum 39 children) and to construct interior alterations.

On Plan 4000MC Blk 13 Lot 1, located at 8708 - Connors Road NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 11, 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 approve an application to convert a Single Detached House into a Child Care Services Use (maximum 39 children) and to construct interior alterations, located at 8708 Connors Road NW. The development was approved, subject to conditions, with a variance granted in the minimum required number of vehicular and drop-off parking spaces.

The subject Site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board:

- Reasons for the Appeal, received on May 12, 2015, from the Appellant.
- A Memorandum from City of Edmonton Transportation Services dated April 30, 2015.
- An on-line response from affected property owners (oppose the proposed development).
- A letter of opposition from an adjacent property owner.

- A written submission from the Development Officer received on June 11, 2015.

Mr. J. Noble, the Appellant, did not appear. He was contacted and was advised that the Board would proceed on the basis of his original appeal in which he expressed the following concerns:

1. He is concerned about the deficiency in parking and describes the serious parking challenges directly within this neighbourhood. There are two churches on the block and years of road construction ahead which will hamper parking for years to come.
2. He expressed concern about the extra traffic this change in use would create and feels that parents will leave vehicles parked in the neighbourhood all day while they take public transit to work.
3. Connors Road is very busy and there are many community activities that exacerbate parking and traffic concerns.
4. He strongly feels that a single family house should remain a house and is not a commercial building. He does not believe a commercial venture should operate within a single family structure.

The Board heard from Ms. D. Charrois and Mr. D. Kucinkas, affected property owners, who provided the following information:

1. They expect that the proximity of the future LRT line will increase the parking congestion on the surrounding roads and alleys.
2. A daycare in this location will result in the service road being used to drop off children in front of their house.
3. Mr. Kucinkas has injuries which limit him and he anticipates he will have to shovel snow to ensure that those being dropped off can get to the daycare property.
4. They will not have access to their own house due to daycare parking.
5. Mr. Kucinkas works split shifts and has to sleep during the day. He is concerned about the noise from children playing outside.
6. Connors Road is already very noisy and extra traffic and children will result in additional noise.
7. They already lose parking during the Folk Fest.
8. Their main concerns are congestion, noise and pollution.
9. They would not have bought their property if a Child Care Service Use existed at the subject property.

They provided the following response to questions.

1. Part of the service road will be lost due to LRT construction although the extent of this loss is not known.

The Board heard from Mrs. R. Kaminsky and Mr. W. Kaminsky, affected property owners, who provided the following information:

1. They are direct neighbours and have lived at their residence for 45 years. They expected to retire in a quiet area.
2. The property has been vacant for 1 ½ years and is overrun with weeds and the grass is not cut very often. There have been no recent improvements to the condition of the property.
3. They were shocked when they received the notice of the proposed development and feel that a 4 foot fence is not adequate. They are of the understanding that a fence is not even required.
4. They have a small dog who will bark at the children.
5. Parking is already a problem in the area.
6. There will be a loss of a sense of security as no one will be living in the house.
7. Currently no one parks for the entire day on the service road in front of their home which allows for visitor parking.

The Board heard from Mr. J. Ruhl, an affected property owner, who provided the following information:

1. He referred to the written submission he had provided to the Board. The Presiding Officer advised that the Building Code and Child Care Licensing Regulation are not under the purview of this Board.
2. Mr. Ruhl stated if a property does not meet the Building Code it should not be given a Development Permit to begin with.
3. This property is located within the RF3 Small Scale Infill Development Zone. Forty five people (children plus staff) at the property daily is not the intent of this zone and he is concerned with this intensity of use.

The board heard from Mr. L. McClellan, on behalf of Mr. R. Rutherford, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. He referenced the written submission of Mr. R. Rutherford.
2. The proposal complies with the requirements of the RF3 Small Scale Infill Development Zone and with the Mature Neighbourhood Overlay. Child Care Service is a Discretionary Use within the RF3 Small Scale Infill Development Zone.
3. Mr. McClellan reviewed the parking requirements contained in Mr. Rutherford's written submission.
4. He addressed the locational requirements for a Child Care Services Use contained in Section 80.1 of Edmonton Zoning Bylaw:
In all low density Residential Zones the Development Officer shall, when making a decision on the suitability of the Child Care Service for the location proposed, give preference to those facilities that are located:
 - a. abutting a collector or arterial road,
 - b. on a corner Site,
 - c. adjacent to or in community facilities such as a school, park, church or community centre; or
 - d. adjacent to commercial areas or multi-family development;

The proposed site fully complies with Items (a) and (b) and is in close proximity to the areas listed in Items (c) and (d).

5. He referred to the Memorandum from Transportation Services which states that there will be staggered child drop-off and pick up times; not everyone will require the parking spaces at the same time.
6. Concerns of neighbours regarding people parking indefinitely after dropping their children off could be worked out privately between the daycare operator and her clients.

Mr. McClellan provided the following responses to questions:

1. The locational requirements contained in Section 80.1(a)(b)(c) and (d) are not comprehensive and a Child Care Service Use could meet any one of the requirements; it does not have to meet them all.
2. He confirmed that the property would no longer be considered as Single Detached Housing; this reference was just used in the Development Officer's submission to show the contrast in parking requirements.
3. The two parking stalls in front of the garage could be included in calculating the available on-site parking. These stalls had not been included by the previous Development Officer.

The board heard from the Respondent, Ms. L. Abiva, who provided the following information:

1. She described her motivation for applying for this development permit. She has been working at Montessori Schools and daycares since 2007. She was inspired by the high quality of daycare provided and wanted to open a facility of her own.
2. The application allows a maximum number of 39 children but she does not expect to have that many.
3. She wants to cater to babies and as there is a low baby to staff member ratio and the total number of children in care would be closer 20.
4. Field trips to a local park or the library could be arranged during the Folk Fest to address parking concerns.
5. In her application, she had proposed using additional parking spots along the back alley but these were not approved and she was advised to use the service road in front of the property.

Ms. Abiva provided the following responses to questions:

1. She confirmed that she would have a maximum of 25 children.
2. She will have four or five staff. Most do not drive as they do not have a driver's licence.
3. She would be willing to reduce the maximum allowable number of children in the facility to help address the parking concerns of her neighbours.
4. The amount of noise depends on the activities the children are engaged in. She has a wealth of experience and training in dealing with all types of children including those with special needs which would allow her to mitigate any noise.
5. She could take the children to a park if the neighbours want quiet time during the day for rest.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED AS APPROVED BY THE Development Authority, subject to the following condition:

1. The maximum number of children is reduced from 39 to 25.

In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. A variance is granted reducing the minimum required drop-off parking spaces by 4 drop-off parking spaces.

Reasons for Decision:

The Board finds the following:

1. Child Care Services is a Discretionary Use in the RF3 Small Scale Infill Development Zone, Section 140.3(2).
2. The Board heard from several directly affected neighbors who were concerned about the increased change in intensity that a Child Care Service Use would have compared to a Single Family Home. The Board finds by reducing the maximum number children from 39 to 25 will help mitigate some of the concerns presented today.
3. The Respondent confirmed that she would be willing to accept a reduction in the maximum number of children from 39 to 25.
4. The Board notes that City of Edmonton Transportation Services had no concerns with respect to the parking variance or traffic.
5. The Board further notes that the Frontage of the subject site is longer than the norm which allows for more on-street parking directly in front of the proposed development.
6. City of Edmonton Transportation Services indicated that drop-off and pick-up times are staggered at the beginning and end of the day, which supports the parking variance.
7. The Board accepts the Development Officer's review regarding locational criteria outlined in Section 80.1 of the Edmonton Zoning Bylaw. It accepts that criteria (a) and (b) are fully met and the proposed development is in close proximity to the areas listed in criteria (c) and (d).
8. The Board heard that the adjacent service road is currently underused for parking.
9. The Board also notes that some representations were made regarding Building Code and Child Care Licensing Regulations. The Board does not have any jurisdiction in determining those criteria.

10. The Board accepts that Section 54.2, Schedule 1(A)(31) of the *Edmonton Zoning Bylaw* states that a Development Officer may consider a Driveway as parking spaces in his calculation and the Board does consider the two stalls in front of the Garage as part of the provided on-site parking.
11. Pursuant to Section 687(3)(d) of the *Municipal Government Act*, 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.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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

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Date: June 19, 2015
Project Number: 171292611-001
File Number: SDAB-D-15-121

Notice of Decision

This appeal dated May 19, 2015, from the decision of the Development Authority for permission to:

Add Automotive and Equipment Repair Shops to an existing General Industrial Use - Extreme Exotic Auto Body Ltd.

On Plan 4207KS Blk 50 Lot 1, located at 8830 - Yellowhead Trail NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 11, 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 approve, subject to conditions, an application to add Automotive and Equipment Repair Shops to an existing General Industrial Use - Extreme Exotic Auto Body Ltd., located at 8830 - Yellowhead Trail NW. The subject Site is zoned IM Medium Industrial Zone and is within the Yellowhead Corridor Area Structure Plan. The approved development permit application was appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board:

- The reasons for the Appeal, received on May 19, 2015, from the Appellant.
- A copy of the Yellowhead Corridor Area Structure Plan.
- A written submission from the Development Officer dated June 3, 2015.
- An on-line response from an affected party opposing the development.

The Appellants, Morlinda Food Management & 77353 Alberta Ltd. indicated through the on-line process that they would not be attending today's hearing. The Board proceeded based on their written submission in which the Appellants made the following points:

1. They have concerns regarding the fumes that enter their front offices and food manufacturing facility.
2. Their food manufacturing facility is regulated and inspected by the Canadian Food Inspection Agency.
3. They have proper make-up air and exhaust systems to prevent exterior contaminants from entering their facility but are concerned that the paints and sealants used from the proposed development are stronger than acceptable levels and may potentially cause safety risks to their food products and employees.

The Board heard from Mr. C. Chan, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. He confirmed there is an existing permit but only for the permitted General Industrial Use (vehicle body repair and paint shop). An auto repair shop had been operating out of the building previously but had moved out last year after a complaint was filed.
2. The new owner is proposing to do both paint and body repair and servicing and mechanical repair.
3. He has no concerns with two different Uses on one site as they are related.
4. He reviewed the parking requirements against the *Edmonton Zoning Bylaw* and no parking variances are required. There are no parking complaints on his system.
5. He looked at the Yellowhead Area Structure Plan as part of his review and did not find any problems.
6. There are other City Departments that could address the concern regarding the paint fumes coming from the auto shop as this is an enforcement issue.
7. There are no complaints on his system regarding paint or fumes coming from the area.
8. He indicated that the area outlined in pink on the submitted site plan contained in his submission is the existing building shown in the photo of his submission. This is the location of the previous business with the General Industrial Use permit.
9. Section D10 of the Development Permit application notes that the previous business at this location had a business licence for auto body repair but not for automobile repair.
10. He stated it was up to the Appellant to contact Alberta Health Services if they had concerns regarding fumes emanating from business.
11. He confirmed the Board is only dealing with the auto repair component of this development. No variances were required and notices had only gone to neighbouring land owners because an Automotive and Equipment Repair Shop is a Discretionary Use in the IM Medium Industrial Zone.

The Respondent, Extreme Exotic Auto Body Ltd., did not appear at today's hearing. An unsuccessful attempt was made to contact them by telephone prior to the start of the hearing.

Decision:

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:

The Board finds the following:

1. The proposed development, an Automotive and Equipment Repair Shop, is a Discretionary Use in the IM Medium Industrial Zone, Section 420.3(2).
2. The Board notes that the current development in place is a valid General Industrial Use, which is a Permitted Use under the IM Medium Industrial Zone 420.2(5).
3. The Development Officer confirmed the following:
 - a. He had reviewed this application against the requirements of the Yellowhead Corridor Area Structure Plan and found it complied with the plan.
 - b. He had reviewed the proposed development to confirm that all Parking and Loading Regulations are complied with as per Section 54 of the *Edmonton Zoning Bylaw*.
 - c. The proposed development complies with all of the regulations of the IM Medium Industrial Zone.
4. The Board accepts the Development Officer's presentation that there have been no complaints regarding parking or fumes.
5. The Board accepts the Development Officer's interpretation that the additional Use of Automotive and Equipment Repair Shop is related to the currently approved General Industrial Use as per Section 7.5(2) of the *Edmonton Zoning Bylaw* which includes vehicle body repair and paint shops.
6. The basis of the appeal provided by the Appellant indicated a concern for off-site fumes to be not fully contained on site. The Use of Vehicle Body Repair and Paint Shops is a Permitted Use in the IM Medium Industrial Zone as per Section 420.2(5) of the *Edmonton Zoning Bylaw*. The Appellant has the opportunity to seek other redress over which the Board has no authority or purview.
7. Pursuant to Section 687(3)(d) of the *Municipal Government Act*, 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.

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