



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: July 7, 2016
Project Number: 188667407-001
File Number: SDAB-D-16-133

Notice of Decision

May 26, 2016 Hearing

- [1] On May 26, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 29, 2016. The appeal concerned the decision of the Development Authority, issued on April 19, 2016, to refuse the following development:

To change the use of a Single Detached House to a Child Care Service and to construct interior alterations.

- [2] The subject property is on Plan 6143NY Blk 23 Lot 9, located at 14804 - 78 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Appellant's written submissions;
- Copies of the development permit application with plans and various email correspondence between the Development Authority and the Appellant;
- Copy of the development permit refusal;
- Copy of the Canada Post receipt of non-delivery of the permit refusal;
- Copy of the Development Officer's Written Submissions, dated May 19, 2016;
- Seven online responses and two letters in opposition to the development, and one online response in support of the development.

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, Permit Masters

- [6] The Applicant, Mr. H. Dato, was represented by Ms. J. Appleby, an Urban Planner with Permit Masters, which filed the appeal on behalf of the Applicant.

Site Context

- [7] Ms. Appleby provided a summary of the subject development and the surrounding area. She explained that the subject Site fronts onto 78 Avenue, with rear laneway access. To the north of the proposed development is a school site with two local parks, including the one connected to the school, which makes the Site an ideal location for Child Care Services.
- [8] Referring to photos included in the Appellant's submissions, she noted the proximity to the school and playground. The Appellant also proposes a rear parking pad just off the rear laneway.

Business Operations

- [9] Ms. Appleby reviewed the daily operations of the proposed development as outlined in the written submissions. She drew particular attention to the drop-off times from 7:00 a.m. to 8:15 a.m., which she submitted was a wide range.
- [10] Referring to page four of the Appellant's written submissions, she clarified that the original application was for both a day care and out-of-school care program. However, the scope of the Child Care Services application is now strictly for out-of-school care program, resulting in the original anticipated 37 children being reduced to 23 children.
- [11] Ms. Appleby submitted that the out-of-school care students are elementary school aged, and will require less supervision, leading to a very efficient pick-up and drop-off operation. Up to eight children are anticipated for the kindergarten program, and the development now proposes three employees rather than the original four.
- [12] Ms. Appleby submitted that the proposed development meets the parking regulations. The updated laneway parking proposal provides space for two reserved pick-up and drop-off spaces, while the third stall will be designated for employee parking. Off-site pickup at the local school site may also be possible. With tandem parking, it may also be possible to provide an additional rear parking space without varying the play space.

Locational Criteria

- [13] Ms. Appleby noted that Section 80(1) of the *Edmonton Zoning Bylaw* merely states that the Development Officer shall “give preference” to certain locational criteria. The subject property is on a corner site, with access from the laneway. It is located in close proximity to the local school which students will be attending. The two nearby park sites also mitigates potential noise concerns.
- [14] At this point, the Presiding Officer noted that Section 80 of the Bylaw, which regulates Child Care Services, had been amended the day prior to the hearing. The Board also noted that it does not review new plans proposed at the hearing which have not been reviewed by the Development Officer, and in this case, the Appellant appears to be proposing some significant changes, including new parking plans.
- [15] As the Appellant was unfamiliar with the new amendments, Ms. Appleby requested an adjournment. The adjournment would also allow for further discussions with the Development Officer with respect to new proposed plans.
- [16] The Development Officer, Ms. E. Peacock, stated that although the Development Authority would not typically agree to an adjournment on the basis of reviewing new plans – which ordinarily require a new application – in this case, she recognized that the recent Bylaw amendments may be unfamiliar to the parties. As such, she was amenable to any decision of the Board in this regard.
- [17] The neighbours who appeared in opposition to the development had no objections to the adjournment request.
- [18] As such, the Board passed a motion to grant the Appellant’s request for an adjournment of the hearing to June 22, 2016, the exact time to be determined at a later date.

June 22, 2016 Hearing

- [19] The Board passed the following motion:

That SDAB-D-16-133 be raised from the table.

- [20] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [21] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Copies of the development permit application with original plans and various email correspondence between the Development Authority and the Appellant;
 - Copy of the development permit refusal;

- Copy of the Canada Post receipt of non-delivery of the permit refusal;
- Appellant's written submissions with updated plans, received June 6, 2016;
- Copy of the Development Officer's Written Submissions, dated May 19, 2016 and revised comments, dated June 16, 2016;
- Ten online responses and two letters in opposition to the development.

Summary of Hearing

i) Position of the Appellant, Permit Masters

- [22] The Applicant, Mr. H. Dato, was represented by Mr. B. Romanesky, an Urban Planner with Permit Masters, which filed the appeal on behalf of the Applicant.
- [23] Mr. Romanesky reviewed the Site Context (see above at paras 7 to 8) and the proposed business operations (see above at paras 9 to 12).

Bylaw Amendments

- [24] Mr. Romanesky submitted Exhibit "A", a document that was presented before City Council when the Child Care Services regulations were amended on May 25, 2016. He noted that the title of this document states: "Bylaw 17643 Text Amendment to Zoning Bylaw 12800 to *Reduce Barriers to Child Care Services*" [emphasis added]. He submitted that Council's intent with respect to the recent amendments was to address the high demand for Child Care Services within the City.
- [25] The recent amendments clarified the locational criteria for Child Care Services. So long as one of the criteria under Section 80(1) is met, the locational requirement is satisfied. Since the subject property is located on a Corner Lot, the locational criteria is met and a variance is no longer required.
- [26] The remaining issues are therefore limited to parking for staff and for pick-up/drop-off.

Parking – Staff

- [27] Mr. Romanesky noted that following the recent amendments, staff parking requirements are now based on Floor Area, with one space required per 33.5 square metres. Previously, staff parking requirements were based on the number of employees. He acknowledged that a variance would still be required.
- [28] Mr. Romanesky submitted Exhibit "B", a document that was presented before City Council which noted the justification for the proposed Bylaw amendments. He referred the Board to the note for Section 54.2(33)(b), which states: "Employees can change substantially with the same number of children depending on program type. This gives

providers more flexibility in the program types they offer without having to change their development permit.” Mr. Romanesky acknowledged that in traditional full-spectrum child care services wherein the school population could vary each year with varying staff requirements, frequent reevaluations of employee parking space requirements may be required. In these circumstances, it may be more appropriate to assess employee parking space requirements based on Floor Area.

- [29] However, the subject property is restricted to before/after school care for up to eight kindergarten aged children, and 15 elementary school aged children. This demographic will not change. As such, employee requirements will remain constant at a maximum of three employees. Mr. Romanesky suggested that should the Board grant the development, the Appellant is amenable to a condition that limits the permit to a maximum of three staff members. The Appellant recognizes that should this number change in the future, a new development permit application must be processed.
- [30] Mr. Romanesky produced a revised proposed site plan (attached as Schedule “A”), which he acknowledged has not been discussed with the City. The plan provides for four on-Site parking spaces to the rear of the property, which will meet the needs of the three employees. He acknowledged that two spaces are in tandem, but one of the spaces will be used by the owner. The owner, plus the other two employees, will be able to manage the logistics of the tandem parking so as to minimize access issues.
- [31] When questioned by the Board, Mr. Romanesky confirmed that provincial requirements have been met with respect to the employee-to-children ratio. In the morning, three staff members will be available as all the children will be on-site. The staff will then walk the children to the nearby school for their classes. When the half-day kindergarten classes end, two staff members will walk the kindergarten children back to the subject property and remain on-site. Finally, when the elementary school children are out of school, all three staff members will once again be on-site.

Parking – Passenger Pick-up/Drop-off

- [32] With respect to the drop-off requirements, Mr. Romanesky acknowledged that the requirements have not changed, with two spaces required for the first 10 children, plus one space for each additional 10 children. As such, a variance is still required.
- [33] However, he differentiated kindergarten and elementary school children from toddlers and infants, who require greater assistance and supervision when being picked up or dropped off. He submitted that since the proposed development is now restricted to before/after school childcare for kindergarten and elementary school children, the pick-up and drop-off demands can be met by the proposed on-street drop-off spaces along 78 Street NW, as per the revised proposed site plan.
- [34] Mr. Romanesky noted that following the recent amendments to the Child Care Services regulations, passenger pick-up/drop-off requirements may now be met via on-street

parking after consultation with Transportation Operations pursuant to Schedule 1(A)(33) of Section 54. However, he was not aware of any information from Transportation Operations in this regard.

Community Concerns

- [35] Referring to the reasons submitted by neighbours in opposition to the development, Mr. Romanesky noted that safety concerns are not typically a part of the development permit process. However, the applicant will ensure that a proper alarm and security system will be installed on site. Contact information will also be provided to neighbours so that they can report anything suspicious.
- [36] With respect to noise concerns from children playing outdoors, the Appellant will be making heavy use of the nearby park. Although the Appellant has not calculated the number of days that children will be unable to play outdoors due to inclement weather, the intent is to run indoor activities in such instances so as to mitigate impact upon neighbours.
- [37] Upon questioning by the Board, Mr. Romanesky stated that the facility will be closed during the summer. Since the owner does not reside in the house, the property will be unoccupied during the summer months. However, a regular maintenance schedule is in place to ensure the proper upkeep of the property.

ii) Position of the Development Authority

- [38] The Development Authority was represented by Development Officers, Ms. E. Peacock and Mr. P. Adam.
- [39] The Development Authority acknowledged that due to the recent amendments to the Child Care Services regulations, the locational criteria has now been met, and no longer serves as a reason for refusal.
- [40] The pre-amendment Section 80(8)(d) regulation with respect to the “peaceful enjoyment of the properties of nearby residents” has now been removed. However, Child Care Services remains a Discretionary Use in the RF1 Single Detached Residential Zone. As such, the peaceful enjoyment of the properties of neighbouring residents would still be a factor that Development Officers will consider when exercising their discretionary powers.
- [41] Upon questioning by the Board, the Development Officers acknowledged that Council’s intent with respect to the recent amendments is to alleviate Child Care Service stresses within residential areas, and to make the application process somewhat simpler. However, not all residential areas are suited for Child Care Services developments, and specific factors must be considered. Further, the amendments clearly expand Child Care

Services opportunities in industrial zones, but not necessarily for RF1 Single Detached Residential Zones.

- [42] In this instance, the Development Authority must consider the parking requirements and the possible effect of the development upon the neighbourhood, particularly as the subject property is located within a low density residential area.
- [43] The biggest impact of the recent amendments relate to parking, specifically employee parking which is now based on Floor Area, resulting in a deficiency of four employee parking spaces.
- [44] The drop-off spaces also remain deficient. The Development Officers acknowledged that the amended parking requirements provide the possibility of on-street drop-off parking spaces, in consultation with Transportation Operations. However, in this instance, Transportation was not comfortable providing comments.
- [45] Upon questioning by the Board, the Development Officers stated that they were aware of instances wherein residential properties were converted completely into Child Care Services.

iii) Position of Affected Property Owners in Opposition to the Development

- [46] Mr. A. Fedechko and Mr. S. Cholak appeared before the Board, representing the residents of 7816 – 148 Avenue and 7820 – 148 Avenue. They also stated that they spoke on behalf of all residents within the notification area who opposed the proposed development. They submitted Exhibit “C”, which contained additional letters of opposition and a petition signed by 23 individuals from 14 properties located in the 60 metre notification area. They stated that the proposed development presents significant concerns relating to safety, garbage, noise, and parking stresses. They also questioned the appropriateness of the development at this particular location.
- [47] With respect to safety concerns, they questioned whether appropriate supervision is in place when the children cross 149A Avenue, which is a busy roadway. The proposed pick-up/drop-off parking spaces are also located in areas with high traffic flow, and winter conditions can further compound the safety concerns.
- [48] They raised concerns about waste management for a facility serving 23 children. If a dumpster is used, then there will be no space on the property. If barrels or drums are used instead, then the garbage could spread all over the property.
- [49] With respect to noise, they questioned why the proposed development must be located on this particular property, when it could be located approximately four blocks away in Londondale Mall. When questioned by the Board about other Child Care Services in the neighbouring area, they were unsure about specific locations, but believed there was one

located on 77 Street, and one located in a nearby school as per the letter of opposition from Ms. A. Taylor.

- [50] Finally, with respect to the proposed parking, they noted that residents currently park in front of their properties. The proposed on-street parking will impact the existing parking stresses. In addition, the subject development fronts onto 78 Street, which has a curb-to-curb width of approximately 29 feet and 6 inches. Should a 7 feet wide vehicle be parked on both sides of the street at the same time, there would be no space for two vehicles to pass each other. By contrast, 149A Avenue is 38 feet wide, and does have sufficient space for two cars to bypass each other, even if on-street parking were to occupy both sides of the street. They also noted that the proposed stalls in the rear lane present an increased risk of accidents.
- [51] Ms. S. Tovares from 7812 – 148 Avenue also appeared before the Board in opposition to the development. She stated that the proposed parking for the subject development will impact her ability to access her own property, as there will be people parked on her driveway. Her parents also reside at the same property, and the subject development will impede their ability to leave or access their home as well. In addition, her father has advanced Parkinson's Disease, and children playing in the school's yard will frighten both her father and her dog.
- [52] Ms. Tovares also noted that with the facility being closed for the summer, the risk of vandalism will increase as nobody actually resides on the property. Finally, due to the nearby school zone, drivers have been known to use the rear lane to bypass 149A Avenue. The proposed rear lane parking spaces would therefore raise safety concerns. In her view, the proposed development would be more appropriate located in a strip mall such as the one on 77 Street and 144 Avenue.

iv) Rebuttal of the Appellant

- [53] Mr. Romanesky emphasized that this appeal concerns the implementation of Council's intent, and the recent amendments to the Child Care Services regulations indicate that Council is reinforcing the appropriateness of Child Care Services in the RF1 Single Detached Residential Zone.
- [54] He reiterated that all provincial regulations with respect to the supervision of children have been met. The revised proposed site plan clearly indicates that all parking spaces are safe and located fully on the subject Site rather than on neighbouring driveways.
- [55] With respect to neighbourhood concerns about vandalism and waste disposal, he stated that a maintenance schedule is in place. Should the maintenance not meet bylaw requirements, then the matter will be dealt with through bylaw enforcement.
- [56] Finally, he submitted that Child Care Services is actually a solution to crime in the neighbourhood as it provides extra sets of eyes at various times of the day.

Decision

[57] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED, subject to the following CONDITIONS:

- 1) The development shall have no more than 23 children.
- 2) The children must be elementary school-aged children, from kindergarten to grade six.
- 3) The business shall be run as a before/after-school care service only.
- 4) The hours of operation shall be from 7:00 a.m. to 6:30 p.m., Monday to Friday.
- 5) The outdoor play space shall be fenced on all sides and all gates shall be self-latching. Reference Section 80(3)(a)
- 6) All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).
- 7) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. Reference Section 51

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

- 1) Section 54.1(2)(f) and Section 54.2(1)(2)(e)(ii) are varied to permit tandem parking in the flanking side yard.
- 2) Schedule 1(A)(33)(a) of Section 54 with respect to pick-up/drop-off loading zone requirements is waived.
- 3) Schedule 1(A)(33)(b) of Section 54 with respect to employee parking space is varied to permit a deficiency of 4 employee parking spaces. A total of 3 on-site employee parking spaces shall be permitted.
- 4) Schedule 2(1) of Section 54.3 with respect to Bicycle Parking is waived.
- 5) Schedule 3(2) of Section 54.4 with respect to Loading Space is waived.

Reasons for Decision

[59] Child Care Services is a Discretionary Use in the RF1 Single Detached Residential Zone ("RF1 Zone").

[60] The *Edmonton Zoning Bylaw* was amended on May 25, 2016. The amended Section 80(4)(b) includes new locational criteria for Child Care Services when that use is proposed for a converted single detached house:

80(4)(b) Where a Child Care Services Use is proposed as part of a Dwelling, or is proposed in a converted Single Detached Housing, the Use shall only be located:

- i. on a Corner Lot; or
- ii. on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or
- iii. Abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.

- [61] Since the subject development will be a converted Single Detached House on a Corner Lot, the proposed development satisfies the new locational criteria for this type of use in a RF1 Zone as set out by City Council.
- [62] The Board notes that the former Section 80(8)(d), which addressed the criteria for the peaceful enjoyment of neighbouring properties in relation to outdoor playspace was repealed by City Council on May 25, 2016.
- [63] This development, as it is a Discretionary Use, must be assessed as to whether it will be incompatible with existing surrounding land uses. The Board has placed several conditions on the development permit, which include restricting the hours of operation, limiting the number of students to 23 children, and restricting the proposed development to a before/after school care program instead of a full daycare program.
- [64] As such, these conditions will reduce the potential impact of the noise, traffic, and parking issues that could be generated by the development to the extent that this development will not be incompatible with the existing uses. Accordingly, the Board exercises its discretion to allow the change of Use.
- [65] The Board also granted variances to the parking, loading and bicycle parking requirements of the *Edmonton Zoning Bylaw*. The Board granted the variances for the following reasons:
- 1) The Board was satisfied by evidence presented by the Appellant that only three staff for 23 children are required by provincial legislation.
 - 2) By limiting the number of students, staffing requirements are significantly reduced.
 - 3) The staff parking requirements in the *Edmonton Zoning Bylaw* are based upon the total Floor Area of the proposed development and therefore do not take into account the actual parking needs of this development, which is something that this board has the authority to consider, based on the evidence submitted before it.
 - 4) Given that the development – if tandem parking is considered and which the Board is allowing – will have six on-site parking spots, the Board finds that this is sufficient to address the needs of this development. The proposed Child Care Service will have parking space for three staff members, and three spots which will be available to parents who are picking up/dropping off school-aged children. The parents will be picking up and dropping off children at various times, which reduces impact upon on-street parking.

- 5) The condition imposed by this Board limiting the children to school-aged children means there will be no pick-up and drop-off of infants and toddlers during the day, which will reduce the length of time for pickup and dropoff.
- [66] The Board notes that there was widespread opposition to the development within the 60 metre notification area. The Board has considered this opposition. Upon reviewing the petition signed by residents in opposition to the development, which is “to change the use of a Single Detached House to a Child Care Service and to construct interior alterations,” the Board finds that the main opposition in the neighborhood appears to be to the existence of the Child Care Service itself, and not necessarily to the specific requested variances.
- [67] While the Board does note that this is a Discretionary Use, for the reasons outlined above, the Board finds that this Use will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The appeal is therefore allowed.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. P. Jones; Mr. N. Somerville; Ms. N. Hack; Mr. R. Hachigian

Important Information for the Applicant/Appellant

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

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



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Appeal Board*

10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: July 7, 2016
Project Number: 139511609-005
File Number: SDAB-D-16-145

Notice of Decision

- [1] On June 22, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on May 30, 2016. The appeal concerned the decision of the Development Authority, issued on May 25, 2016, to refuse the following development:

Construct exterior alterations to an existing Automotive and Minor Recreation Vehicle Sales/Rentals development (revise previously approved landscape plan to replace landscaping with fencing)

- [2] The subject property is on Plan 1428NY Blk 21 Lots 1,2U, located at 8115 - 137 Avenue NW, within the CB1 Low Intensity Business Zone.

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

- Copies of the development permit application with original plans;
- Copy of the development permit refusal;
- Request by Appellant for a postponement to the hearing;
- Development Officer's objection to the request for postponement;
- The Board's decision dated June 1, 2016, refusing the request for postponement;
- Appellant's written submissions with updated plans, received June 6, 2016;
- Copy of the Development Officer's Written Submissions, dated June 16, 2016 with Site inspection photos; and
- Copy of the Board's previous decision, SDAB-D-15-071.

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, Mr. P. Grewal

- [6] Mr. Grewal was represented by his agent, Mr. M. Saeed and his legal counsel, Ms. G. Stewart-Palmer.
- [7] The Appellant submitted Exhibit “A”, written submissions with various photographs of the subject Site.

Authority of the Development Officer to Amend Conditions to an Existing Development Permit

- [8] Upon questioning by the Board, the Appellant clarified that the application before this Board is for an amendment to a condition from an existing permit, Project Number 139511609-001, issued on January 30, 2014 (Exhibit “B”). One of the conditions of this 2014 Permit required that “Landscaping shall be in accordance to the approved landscape [plan], Section 55 and to the satisfaction of the Development Officer.” The permit granted a variance to the landscaping requirements, and allowed for 23 shrubs instead of 24.
- [9] The Appellant now applies for a variance to this condition to allow for one tree and zero shrubs.
- [10] The Appellant submitted that the Development Officer does have the authority to consider a variance to an existing permit, and that this authority is inherent in the Development Officer’s discretionary powers, stemming from the basic principle of statutory interpretation that the law is not absurd. As an example, the Appellant noted that in large developments such as the Ice Arena which is currently under construction, it is not uncommon for minor changes to be required during building construction (eg. removal or change in location of a door). In such instances, it would be absurd to require that the developer submit an entirely new application, with new site plans, engineering reports, etc. As such, it follows that a Development Officer must have the authority to contemplate minor variances to existing development permits, including the conditions attached to such permits.

Site History

- [11] Prior to the Appellant’s purchase of the subject property, the site operated as a U-Haul parking facility for a number of years with the same configuration, including the existing asphalt. As such, when Mr. Grewal purchased the property, he only needed to move into the existing building, and interior or exterior alterations were not required.

- [12] The 2014 Permit therefore contained an error: the scope of application contemplates the construction of exterior alterations, including landscaping and new accesses, but in fact, no exterior alterations were needed.
- [13] The Appellant submits that this error is critical, as the Development Officer's written submissions indicate that the 2014 Permit may no longer be valid because no exterior alterations have been completed. It is the Appellant's position that this is incorrect, as Mr. Grewal has certainly moved into the building, and the 2014 Permit has therefore crystallized.
- [14] Upon questioning by the Board, the Appellant clarified that had the original scope of application for the 2014 Permit been correctly described, omitting any reference to exterior alterations, the 2014 Permit would have been captured by the landscaping exemption under Section 55.2(2), which states in part: "This Section shall not apply to developments that consist solely of interior alterations or improvements or change of use that does not alter the building shell." On that basis, the Appellant submits that the condition requiring landscaping pursuant to Section 55 should not have been included in the original 2014 Permit.
- [15] Notwithstanding, the Appellant acknowledged that the error was not appealed, and the scope of application for the 2014 Permit therefore remains valid. The remaining issue before this Board is therefore whether it should exercise its discretionary powers and grant the requested variance.

Site Context

- [16] The Appellant provided a brief overview of the subject property, which is located at the southeast corner of 8115 – 137 Avenue and fronts onto 82 Street. Referring to pictures submitted in Exhibit "A", the Appellant noted that there is existing landscaping provided either on neighbouring properties or along public property such that the requested landscaping variances would be appropriate.
- [17] Referring to the landscaping regulations under Section 55 of the *Edmonton Zoning Bylaw*, the Appellant drew the Board's attention to Section 55.1, the General Purpose of the landscaping development regulations, which states:
- The intent of these Landscaping regulations is to contribute to a *reasonable standard of liveability* and appearance for developments, from the initial placement of the Landscaping through to its mature state, to provide a positive overall image for Edmonton and to encourage good environmental stewardship. [emphasis added]
- [18] The Appellant submitted that notwithstanding the landscaping deficiency, the criteria for a "reasonable standard of liveability" is met by the unique site context. As noted in the written submissions and photographs submitted in Exhibit "A", the Site is located in a

mature neighbourhood, with mature trees on the City's lot across the service road, and mature trees on neighbouring property. The commercial site on the west side of the subject property provides landscaping, and both sites are asphalted parcels. The property across from 82 Street does not have landscaping.

- [19] The Appellant also noted that the proposed development has not received any opposition from neighbouring property owners, which suggests that there is no undue impact upon neighbours.
- [20] Upon questioning by the Board, the Appellant clarified that the effect of granting the variance would result in the elimination of the setback in its entirety. The installation of a fence in place of the landscaping requirements would allow the Appellant the full usage of the Site, right up to the property line. A fence is also preferred as it would minimize security concerns and improve liveability, as the Site is quite small.
- [21] As such, the Appellant confirmed that in addition to the requested variance to the landscaping condition in the 2014 Permit, he was also requesting a variance to condition eight, which states that "There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 3.0 m (9.8 ft) yards."
- [22] Upon questioning by the Board, the Appellant confirmed that contrary to the approved site plan attached to the 2014 Permit, the access requirements have not yet been met.

ii) *Position of the Development Officer, Mr. I. Welch*

Authority of the Development Officer to Amend Conditions to an Existing Development Permit

- [23] Mr. Welch stated that the Development Authority takes the position that although it may vary regulations, it cannot vary conditions to an approved permit. As such, the matter before this Board concerns an entirely new application with new variances and conditions required.
- [24] In this case, the Development Authority considers "exterior alteration" as encompassing one of two things: either an alteration to the building, or an alteration to the Site itself, which is located outdoors. In this case, since the Appellant has requested a variance to the outdoor landscaping requirements, the scope of application accurately describes the proposed development.

Site History

- [25] Mr. Welch noted that prior to the 2014 Permit, the last approved permit for the subject Site was in 1969 for a service station, which did not contemplate the storage and parking of U-Haul vehicles. As such, the Transportation Department was of the view that site

accesses would need to be updated, which is why the site plan attached to the 2014 Permit references this site access.

- [26] With respect to the landscaping requirements that were a condition of the 2014 Permit, Mr. Welch explained that the City consulted with the Appellant on numerous occasions to negotiate landscaping requirements that would meet both the Appellant's needs and the requirements of the *Edmonton Zoning Bylaw*. As a result of these consultations, the Appellant agreed to the landscaping requirements as per the 2014 Permit. These landscaping requirements provided for sufficient screening while also allowing people to actually see the Site.
- [27] Upon questioning by the Board with respect to the landscaping exemption under Section 55.2(2), Mr. Welch clarified that although the 2014 Permit was for a change of Use, external alterations would have been considered reasonable as per the City's expectations following the various consultations with the Appellant. Further, since the proposed development involves a discretionary change of Use, additional exterior alterations could be required for the Site as long as there are reasonable grounds.
- [28] Referring to SDAB-D-15-071, Mr. Welch noted that this previous decision of the Board properly sets out the rationale for landscaping requirements. In the spirit of consistency, the Board should uphold its previous decision.

Site Context

- [29] Mr. Welch submitted Exhibit "C", a series of photographs showing the double parking of vehicles right up to the residential property located to the east of the subject development. The photographs also depicted vehicles parked to the edge of the sidewalk. Mr. Welch stated that when he visited the Site at approximately 11:00 p.m. two nights ago, he counted 43 vehicles parked on the Site. It was his view that half the issues regarding landscaping could be resolved if the Appellant were to operate his business in accordance with the site plan as agreed to in the 2014 Permit.
- [30] The Board noted that based on the photographic evidence, there appears to be substantial screening provided by other sites both to the east and south of the property. The Board questioned whether landscaping for screening purposes had therefore been sufficiently met.
- [31] Mr. Welch clarified that the trees and shrubbery have actually been provided by the City. Off-site landscaping cannot be used to satisfy the landscaping requirements under Section 55. Should the City-supplied treed boulevard be demolished in the future, that screening would no longer exist, and the City cannot impose off-site screening upon other sites.
- [32] Each property is responsible to other neighbouring properties to meet a reasonable standard of development and avoid undue negative impact. In this case, when approaching the Site via 82 Street, the Site is visible from the public road.

- [33] Ms. K. Haromy from the City of Edmonton's Transportation Department stated that the Department's concern is that should the development be approved without requirements for fencing or proper landscaping, there is insufficient safety or protection for pedestrians. Should such a development be granted, the subject Site would essentially consist of a continuous asphalt field, and curb stops would then be required to mitigate the impact from the lack of fencing or landscaping.

iii) Rebuttal of the Appellant

- [34] The Appellant stated that even if landscaping requirements were met, the trees and shrubbery would not survive the movement of vehicles and the Site use. Further, the landscaping would require a three metre setback, which would require maintenance. A fence along the property line would eliminate the need to maintain this setback.
- [35] Finally, the Appellant clarified that the development consists of a phased approach: the first phase is intended to resolve the landscaping concerns, whereas the second phase will deal with the storage of vehicles on the subject Site.

Decision

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

Reasons for Decision

- [37] The Board first dealt with the issue of the nature of the appeal before it. The permit decision issued by the City of Edmonton on May 25, 2016 is worded as the refusal of an application for a new development permit, being to "Construct exterior alterations to an existing Automotive and Minor Recreation Vehicle Sales/Rentals development (revise previously approved landscape plan to replace landscaping with fencing)".
- [38] However, the submissions from the Appellant were that the Applicant applied to the Development Authority for an amendment to a condition in the existing permit issued on January 30, 2014 (the "2014 Permit"). This was supported by the development permit application wherein the Applicant applied for an "alteration to the approved plan".
- [39] The Respondent City of Edmonton on questioning by the Board appeared to agree that this was an application to alter the landscaping plan that was required and attached to the original 2014 Permit.
- [40] During the course of submissions made by the Appellant, the Appellant indicated that an alteration to Condition 8 of the 2014 Permit was also being sought. This condition

restricted parking, loading, outdoor service or displays within the required 3 metre setbacks from the north, east, and west property lines. While this was not listed in either the Development Permit application or the notice of appeal filed with this Board, the Board nevertheless decided to hear the appeal and to decide on the merits as to whether the landscaping condition in the 2014 permit should be altered and whether, on the merits, a variance should be granted to the required 3 metre setback on the north, east, and west property lines as required by Section 330.4(3) of the CB1 Low Intensity Business Zone (“CB1 Zone”).

[41] Automotive and Minor Recreation Vehicle Sales/Rentals are a Discretionary Use in the CB1 Zone.

[42] The General Purpose of the CB1 Zone is set out under Section 330.1, which states:

The purpose of this Zone is to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. *Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.* [emphasis added]

[43] When assessing whether this Discretionary Use should be allowed, it was open to the Development Officer and required of the Development Authority, to ensure that the development was “sensitive” with the surrounding residential neighbourhood and the existing commercial street.

[44] The subject Site borders residential zones to the east and south. For this development to be sensitive to those residential uses, it is important for the Automotive and Minor Recreational Vehicle Sales/Rentals Use to be as non-intrusive as possible. This can be achieved by requiring the 3.1 metre setback as per Section 330.4(3), and to require landscaping within that setback.

[45] The Board heard evidence from the Development Authority that the landscaping plan which is part of the 2014 Permit was developed in conjunction with the Appellant and was created to provide a balance between the need for screening of the development and the needs of the development to have inventory visible from 137 Avenue. The Development Authority constructed the landscaping plan such that shrubs and low vegetation would be more prominent in the areas facing 137 Avenue, on the north side of the subject Site, which met the requirements for a vegetated setback, while still allowing for visibility of the development’s inventory.

[46] When asked, it became clear that the reason the Applicant wishes to remove the 3.0 metre required setback and all landscaping requirements, with the exception of one tree, is to intensify the use of the Site.

[47] The 2014 Permit attaches site plans which authorize storage and parking collectively of up to 26 vehicles. The photographic evidence presented to the board shows that this is

currently being exceeded. The Board notes that the Appellant has requested the removal of the landscaping requirements and the elimination of the 3.0 metre setbacks, but has not applied to alter the site plan to increase the number of vehicles stored on the Site.

- [48] The Board finds that, by implication, there is a requested intensification of the use being made by the Appellant in requesting to be able to park inventory vehicles right up to the property line. Such an intensification of the use is not only beyond the scope of the 2014 Permit, but also the Board finds such intensification would have a negative visual impact upon neighbouring property owners, particularly the residential properties to the east and south of the subject Site.
- [49] The Board finds that for it to grant the requested variance to the 3.0 metre setback, and to remove the landscaping requirements from the 2014 Permit, would unduly interfere with the amenities of the neighbourhood.
- [50] The amenities of this neighbourhood would be enhanced by the setback and landscaping required along 82 Street and along 137 Avenue. The Board is cognizant that this is not a CB2 General Business Zone, but a CB1 Low Intensity Business Zone where the business has to be sensitive that it borders on residential zones. That sensitivity is enhanced by the landscaping as required per the 2014 Permit. For these reasons, the appeal is denied and the decision of the Development Officer is confirmed.

Ian Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. P. Jones; Mr. N. Somerville; Ms. N. Hack; Mr. R. Hachigian

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.