



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 5, 2019
Project Number: 310645804-001
File Number: SDAB-D-19-093

Notice of Decision

- [1] On June 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 23, 2019. The appeal concerned the decision of the Development Authority, issued on May 9, 2019, to approve the following development:

To change the Use of a Professional, Financial, and Office Support Service to a Personal Service Shop operating as a Body Rub Centre

- [2] The subject property is on Condo Common Area (Plan 0828104), located at 11315 - 174 Street NW and Plan 0828104 Unit 9, located at 11315 - 174 Street NW, within the (IB) Industrial Business Zone.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- A letter of objection from Dogs With Wings;
- One email in objection to the proposed development; and
- Online response in objection to the proposed development.

Preliminary Matters

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

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. Krupa, representing River City Electric:

[7] The proposed Body Rub Centre is violating City Bylaws because of the regulation that states that “body rub centres must be located at least 100 metres away from places where children can be found”.

[8] Dogs with Wings are located in the same complex and are visited frequently by vulnerable children who have autism or physical disabilities and it was his opinion that the proposed Body Rub Centre is not suitable for this location.

[9] Even though he filed the appeal, he has been working extensively with Dogs with Wings throughout the process.

[10] He agreed with the comments provided by another affected property owner that this area has been “break-in” free and there have not been any security concerns. However, the proposed business will bring unwanted visitors into the area and has the potential to create a security concern.

[11] None of the businesses in this complex operate after 6:00 p.m. However, the proposed business will be operating during the evening hours and increases security concerns for business owners in this complex.

[12] Mr. Krupa provided the following information in response to questions from the Board:

- a) The notification map was referenced to identify the location of his business in relation to the location of the proposed business. The proposed development will be located on the second floor at the southwest corner of the building. The main entrance to his business is located on the north side of the building and there is an overhead door located at the rear of the building. He has three parking spaces which are located at the front of his business.
- b) There is no crime in this area because there is currently no reason for anyone to come into this area. The proposed business will change this situation because of the fact that it will bring unknown people into the area which creates a security concern.
- c) The appeal was filed primarily because of his concerns about the impact that the proposed development will have on Dogs with Wings.
- d) It was his opinion that this type of business will create security concerns although he could not provide evidence to support that contention.

- e) He acknowledged that he had reviewed the CPTED Report but questioned the fact that the report was prepared by the owner of the proposed business.
- f) Each individual business owner is responsible for their own security systems.
- g) It was his opinion that vehicles parked in the parking lot in the evening hours will bring crime into the area.
- h) The café located in the building is only open until 3:00 p.m. Their primary service is over the lunch hour and they are not open on the weekends.

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

Dogs with Wings – Ms. Slessor:

- [13] The notification map was referenced to illustrate that Dogs with Wings operates from the last two bays located at the north end of the building in which the proposed development will be located. The fenced area located at the rear of the building on the south side is owned by NAPA Auto Parts and has been donated for their use to provide a training area and for foster families to use as an off-leash location for their dogs.
- [14] The entrance to the proposed Body Rub Centre is located at the southwest corner of the same building and they will share the parking lot. As such, there is a high likelihood that their clientele will come into contact with customers of the Body Rub Centre.
- [15] This is not an issue of morality; it is understood that the City of Edmonton has determined that these types of businesses are viable and acceptable ventures subject to the regulatory regime. The primary concern of Dogs with Wings is that the proposed Body Rub Centre will create risks or environmental conditions which will affect their clients who are less able to cope with stressful or unusual situations.
- [16] It has been proven that tension and stress in a client negatively impacts the ability of the dog to sense and react to the client's needs.
- [17] It is their concern that the proposed Body Rub Centre will result in more stress for their clients who will have to walk past the location of the proposed business to access public transit or to be picked up or dropped off.
- [18] There is also a public interest issue posed by locating a Body Rub Centre in the immediate vicinity of the vulnerable women at the federal women's penitentiary that is located across the street from the subject site. Dogs with Wings is involved in a volunteer program with the prison where at least three times a week a female prisoner walks independently from the prison across the parking lot to their facility and then back to the prison. It was their opinion, that walking past a Body Rub studio and its clientele would not be conducive to the prisoners' re-integration and recovery.

- [19] Dogs with Wings is a charitable organization that has been in operation since 1996. Families, children, disabled and vulnerable people form the core of their operations. Their organization contributes towards the improvement of the quality of life of their clients who have few, if any, other opportunities to receive similar assistance in Edmonton.
- [20] Based on previous conversations with the business owner, she urged the Board to carefully review all of the information that has been submitted by the Applicant to ensure that she has been completely candid regarding the intent of the business.
- [21] The prison is located across the street and of course has security cameras and fencing. She also noted that the prison refused to provide security footage following a break in to one of the businesses.
- [22] It was noted that the play structures and training area used by Dogs with Wings on the south side of the building were not captured in the photographs submitted by the Respondent.
- [23] Ms. Slessor provided the following information in response to questions from the Board:
- a) Her daughter has cerebral palsy and is at the centre at least three times a month to help with dog training. She often walks back and forth around the building and is concerned that she may be exposed to employees or clients of the proposed Body Rub Centre who are dressed erotically.
 - b) School children often visit the facility to attend cheque presentations or tour the facility and will have to pass the site of the proposed business to access their location. This is a concern for children and vulnerable clients who may not have the capacity to protect themselves or understand the situation.
 - c) She has personally witnessed men sitting in their vehicles before and after attending appointments at a Body Rub Centre that is located in close proximity to a business that she frequents.
 - d) It was acknowledged that the Development Officer determined that the proposed development is not located within 100 metres of a restricted Use. However, Dogs with Wings is one of only five accredited Service Dog Training Centres in Canada and 200 in the world. The work that they do is unique and specialized and it is difficult to categorize their Use.
 - e) It may become difficult for school groups to attend the facility once parents become aware of the proximity to a Body Rub Centre and foster families may not feel safe coming to use the training facilities in the evening.

- f) Their clients and foster families will have to pass by the entrance to the proposed Body Rub Centre to access the training area at the rear of the building.
 - g) Public transit is located west of the complex along 174 Street and on 170 Street.
 - h) Their concerns were discussed with the volunteer department and the warden of the women's prison.
- [24] There are six parking spaces located at the front of their business and neighbouring business owners have given them permission to use their parking spaces on occasion. Special arrangements have been made to allow their clients to park at the rear of the building which is not a designated parking area.
- [25] Any large trucks or delivery vehicles do not have to pass their location at the north end of the complex.
- [26] School groups and clients using public transit access the facility through the front door. Foster families who drive to the facility often use the rear access.
- [27] There is a sidewalk around the entire complex and dogs in training are often walked around the entire building. Business owners are aware of the training process and are cautious in the area.
- [28] The normal hours of operation are 9:00 a.m. to 5:00 p.m. although some training classes, Board meetings and other special events are held in the evening.
- [29] There are several different types of training programs offered. Traditional fostering involves keeping the dog 24/7 and attending a training course once a week while other foster families bring the puppy to the centre to spend the day and then take it home in the evening.
- [30] It costs \$40,000 and takes two years to train a dog but a client only pays \$1.00. That is why donations are critical to their operation.
- [31] The fenced area at the rear of the building is used primarily by foster families and trainers who receive an access code and have special permission to use the facility.
- iii) Position of the Development Officer, Mr. Chow:*
- [32] The development was approved based on his determination that the Personal Service Shop operating as a Body Rub Centre is reasonably compatible with the surrounding developments, primarily Professional, Financial and Office Support Services in this complex in a primarily industrial use zoned area with no sensitive uses located nearby.

[33] In response to a question, he indicated that he would not change his decision based on the evidence that was provided by the Appellant or Dogs with Wings. The proposed development complies with all of the development regulations and there are no valid planning reasons to deny the property owner's right to that use.

iv) Position of the Respondent, Ms. Rogers:

[34] She has worked in the industry for 15 years and has owned her own business since 2007.

[35] She has a great relationship with the Edmonton Police Service ("EPS") and they work together to ensure her facilities are safe and operated in a community friendly manner. She goes above and beyond to ensure that all of the bylaw requirements are met and has never received a bylaw infraction.

[36] All of the women and men who work in her facilities undergo extensive criminal background checks. They are all sub-contractors who are required to take a course offered by the City of Edmonton.

[37] She completed the basic Crime Prevention Through Environmental Design course ("CPTED") offered by the EPS in April, 2019 because of her desire to provide a safe work environment. She completed the CPTED Report required for this development permit application based on all of the requirements.

[38] She works closely with CEASE (the Centre to End All Sexual Exploitation) and offers assistance to men and women that she encounters with substance abuse problems and provides assistance to get out of the sex trade business if that is their choice.

[39] It was her opinion that the proposed Body Rub Centre will improve security at this business condominium complex because it will operate in the evening and will provide more surveillance of the site.

[40] Based on her experience as a business owner, nothing happens in a parking lot between attendants and clients. The businesses located in close proximity to her facility located on Stony Plain Road have never expressed any concerns or experienced any break-ins during the twelve years that it has been in operation.

[41] Security cameras will be installed inside and outside of the proposed location and will improve security in the area.

[42] It was her opinion that all of the objections are based on morality issues and there is no legal argument to deny the proposed development.

[43] Dogs with Wings does not service groups of vulnerable individuals and is not included on the list of sensitive Uses. It was her opinion that the objections are based on speculation and bias.

- [44] The Body Rub Centres that she currently operates are the best in the City and she has implemented a strict set of rules that have to be followed by herself and her staff.
- [45] It is her goal to ensure that her attendants, clients and surrounding businesses are safe.
- [46] The media portrayals of this business are not accurate. The employees dress normally when coming and going from the business. If they do wear lingerie, it is done inside their rented room, inside the building.
- [47] Ms. Rogers provided the following information in response to questions from the Board:
- a) Signage will not be erected in order for her business to keep a low profile. The business logo is an “apple” symbol that will be installed on the door as well as an open or closed sign.
 - b) It has been her experience that clients tend to park on the street away from the location. However, there is parking available near the entrance to the business at the southwest corner of the building. Her clients would not have a need to park or walk by the north end of the complex where Dogs with Wings are located.
 - c) Most of her businesses average between two and ten client visits per day. Clients stay between 15 minutes and an hour.
 - d) She spoke to the owners of the café and their only request was that her clients not use the parking at the front of the building between 12:00 Noon and 3:00 p.m.
 - e) She agreed to the request of the owner of the building that her clients use parking at the southwest end of the parking lot and not drive through the area at the rear of the building that is used by Dogs with Wings. She would be amenable to having a condition imposed on the approved development permit that her clients are not allowed to access the site at the rear of the building.
 - f) The windows on the ground floor are clear glass and provide an open view to the stairwell. The “apple” logo will be installed on the fire rated door just around the corner of the building.
 - g) It was her opinion that the information provided by Dogs with Wings regarding pre and post appointment activity was simply anecdotal. It has been her experience that clients do not sit in their vehicles for long periods of time either pre or post appointment. There have never been any nuisance issues in parking lots associated with the other businesses that she is currently operating.
 - h) Based on past experience her clients will either park on the street or close to the entrance to the business.

- i) More detailed signage will be erected inside the building at the top of the stairs so that anyone who comes in by mistake will be aware of the nature of her business before they enter the door located on the second floor.
 - j) Panic buttons will be installed in her business to address problems if they arise and she works with the EPS to address any such problems.
 - k) The only concern expressed by the condominium corporation was that she will ensure that her clients park on the street.
- v) *Position of an Affected Party in Support of the Respondent:*

Ms. Cote

- [48] She has worked in the sex trade industry for many years and for many different owners but has never felt more comfortable in a work environment than she does working for Ms. Rogers.
- [49] The City of Edmonton properly licenses Body Rub Centres and supports sex workers. Resources are provided and used to mediate with the general public.
- [50] If a child or other individual happens to wander into a facility they would be politely told that it is an adult only establishment and they would be guided out. Many individuals who work in this industry have children of their own and are not corrupt spirits.
- [51] There are no statistics to support the contention that Body Rub Centres increase crime. It was her opinion that they improve safety because of the nature of the business. Due to the bias and negative connotations associated with the business, patrons do not loiter and conduct themselves as discretely as possible.
- [52] It was her opinion that most of the opposition to this business is based on bias. She is not a bad person and appreciates the opportunity to be heard fairly. Body Rub Centres and the people who work in the industry do not pose a risk to society or other businesses.

vi) Rebuttal of the Appellant

- [53] Mr. Krupa questioned whom the Respondent spoke to on the condominium board because the condominium complex is not independently owned, each unit is owned by the individual business owner.
- [54] He is a member of the condominium board and confirmed that the board did not receive notice of the proposed development. The only notice he received was as a business owner.

- [55] He has spoken to the owner of the café who also expressed concern regarding the negative impact of the proposed business. The café is located in the bay below the site of the proposed Body Rub Centre, which is on the second floor, and he expressed concern that the existing services will not support both uses.
- [56] Installing an apple logo on the door could entice vulnerable people into the building.
- [57] Dogs with Wings do great work and, although they will continue to operate regardless of whether the proposed Body Rub Centre is approved, he asked the Board to consider the impact of the proposed business. Schools will question whether or not to send children to the facility and the volunteer program with the women's prison will be negatively impacted.
- [58] Dogs with Wings is fully dependent on charitable donations that could be severely impacted if the proposed development is approved.
- [59] In response to a question, Mr. Krupa confirmed that there are 16 condominium units in the complex and that only the individual owners received notice, not the condominium corporation.

Decision

- [60] 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 conditions.

Reasons for Decision

- [61] A Personal Service Shop is a Discretionary Use in the (IB) Industrial Business Zone, pursuant to section 400.3(23) of the *Edmonton Zoning Bylaw*.
- [62] Section 7.4(43) of the *Edmonton Zoning Bylaw* states:

A Personal Service Shop means development used for the provision of personal services to an individual which are related to the care and appearance of the body, or the cleaning and repair of personal effects. This Use includes barbershops, hairdressers, beauty salons, tailors, dressmakers, shoe repair shops and dry cleaning establishments and laundromats. This Use does not include Health Services.

- [63] A Body Rub Centre is a type of Personal Service Shop.
- [64] The proposed development complies with all applicable development regulations, including the requirements of Section 97.1 of the *Edmonton Zoning Bylaw*, which states:

At the time a Development Permit application is made for a Body Rub Centre, the proposed location of the Body Rub Centre shall not be closer than 100.0 metres from any Site having a valid development permit for Public Education Services, Private Education Services, Public Park sites, Child Care Services, Temporary Shelter Services, and/or Extended Medical Treatment Services.

- [65] Because the proposed development is a Discretionary Use, notices were sent to the appropriate parties that the proposed change in Use from a Professional, Financial and Office Support Service to a Personal Service Shop operating as a Body Rub Centre had been approved.
- [66] The proposed development is located in a business condominium complex comprised of 16 bays. The Appellant, one of the condominium owners, expressed concern that the proposed development would bring unknown individuals into the area after 6:00 p.m. In his opinion, this would result in an increase in crime in what has been an area without break-ins. However, he was not able to provide any evidence or studies to support the contention that crime is likely to increase because of the presence of a Body Rub Centre.
- [67] Another business that received notice of the approval wrote in to express concern that the proposed development would impact the safety and wellbeing of its employees. However, once again, no evidence was provided to support that concern.
- [68] One of the main opponents to the proposed development was the owner of Dogs with Wings. This business involves the training of service dogs to assist people with disabilities. Children and adults with significant physical, mental and emotional challenges frequent the facility during normal business hours but also in the evening to attend special training sessions and events. Inmates from the neighbouring Women's Penitentiary also visit the business as part of a special volunteer program.
- [69] The primary concern of Dogs with Wings was that their clientele would encounter individuals in vehicles in the parking lot, either waiting for their appointment at the proposed Body Rub Centre or sitting in their vehicles after their appointment. The contention was that this could cause the clientele of Dogs with Wings unnecessary anxiety and stress. There was also a concern that the presence of a Body Rub Centre would deter the clientele of Dogs with Wings from attending their business or donating money to support it.
- [70] However, the Respondent owner of the proposed Body Rub Centre provided evidence that the industry is heavily regulated and there is ongoing contact with EPS and other agencies to ensure that the business is run safely and within the imposed regulations. Based on her experience from operating her business at other locations, her employees do not engage with clients in the parking lot and she has never received a complaint regarding any negative activity occurring in the parking lot. Further, there will be nothing on the outside of the building to indicate that there is a Body Rub Centre located within.

- [71] Because this is a discretionary development, the Board must be satisfied that it is reasonably compatible with surrounding Uses. The Board finds that the proposed development will be reasonably compatible with surrounding Uses for the following reasons:
- a) The only signage for the proposed development will be an “apple” logo that will be installed on an outside door. There will be nothing on the exterior of the building indicating that there is a Body Rub Centre within the building.
 - b) The Body Rub Centre will be located at the opposite end of the building from the bays that are used by Dogs with Wings. There is a considerable distance between the entrance to the proposed business and the entrance to Dogs with Wings that will minimize any potential contact between the clientele of the two operations.
 - c) The Board finds that clients of the Body Rub Centre are likely to park on the street in front of the building or use one of the parking spaces closest to the entrance to the business, well away from Dogs with Wings.
 - d) The Board accepts the evidence of the Respondent based on her experience from operating similar businesses at other locations in the city that her clientele do not loiter in the area either before or after appointments.
 - e) The Board notes that a Crime Prevention Through Environmental Design Report was submitted with respect to the proposed development and is satisfied that the Body Rub Centre will comply with all the applicable requirements. Although concerns were expressed that the report was prepared by the Respondent herself rather than an independent person, a copy of the Respondent’s accreditation certificate was submitted to confirm that she is qualified to prepare such a report.
 - f) No evidence was provided that crime is likely to increase in an area where a Body Rub Centre is developed.
 - g) The Board finds, based on a review of the evidence provided that neither the proposed Body Rub Centre nor its clientele, will have any significant impact on the other businesses that are operating in this condominium complex.

[72] Based on all of the above, the Board concludes that there is no valid planning reason to deny the proposed development.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. K. Cherniawsky, Ms. E. Solez, Mr. D. Fleming, Mr. C. Buyze

Important Information for the Applicant/Appellant

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

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



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SDAB-S-19-004

Project No. 284946199-002

An appeal of the tentative plan of subdivision to create one (1) single detached Lot located at 3333 – 28 Avenue SW was **TABLED** to July 3, 2019.