



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 6, 2018
Project Number: 277162378-001
File Number: SDAB-D-18-092

Notice of Decision

June 6, 2018 Hearing:

- [1] The Subdivision and Development Appeal Board made and passed the following motion:
- “This appeal shall be scheduled on June 27 or 28, 2018, at the written request of the Respondent”

Reasons for Decision:

- [2] The Respondent will be out of the country on June 20 and 21, 2018.
- [3] This is the first postponement request made by the Respondent.
- [4] A letter was sent to the Appellant regarding the postponement request but a response was not provided.

June 27, 2018 Hearing:

Motion:

“That SDAB-D-18-092 be raised from the table”

- [5] On June 27, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 28, 2018. The appeal concerned the decision of the Development Authority, issued on May 2, 2018, to approve the following development:

To allow access off 67 Avenue NW and to park in the Front Yard of a Single Detached House

- [6] The subject property is on Plan 1412HW Blk 2 Lot 6, located at 10722 - 67 Avenue NW, within the RF3 Residential Small Lot Zone. The Mature Neighbourhood Overlay applies to the subject property.

[7] 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; and
- The Respondent's written submissions.

[8] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Photographs submitted by the Appellant
- Exhibit B – copy of the Development Permit for the Accessory Building

Preliminary Matters

[9] 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.

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

[11] 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. J. Morgan:

[12] Mr. Morgan confirmed that he wished to proceed and was no longer seeking an adjournment to the hearing as indicated in his prior communications.

[13] The property owners were notified by the City to re-seed over the pre-existing driveway, but failed to comply with this directive.

[14] This development does not comply with *Bylaw* requirements that new developments are not allowed to have a rear access driveway and a front access driveway.

[15] Ignoring directions from the City to re-seed over the existing driveway was part of the property owner's development plan for the site. This allowed them to apply for the variance at a later date and completely circumvent the directive to remove the existing front driveway.

[16] Approving this development will have far reaching implications because it will set precedence for other developers to apply for development permits to install front drive access. This will be detrimental for the neighbourhood as a whole because it will destroy the aesthetic character of the community by allowing vehicles to be parked in front yards.

- [17] Parking is becoming a big concern in this neighbourhood because of all of the infill development. This development takes two parking spaces off the street creating even worse impacts in the winter as residents typically do not use their rear detached garages during the winter months because of the condition of the rear lane.
- [18] According to Section 814.3(17) of the *Edmonton Zoning Bylaw*, access from a public roadway is not permitted to continue where an abutting lane exists regardless of whether a Site has existing vehicular access from a public roadway, other than a lane.
- [19] The Development Officer noted that Allendale is undergoing Neighbourhood Renewal this year that will see curbs and sidewalks reconstructed throughout the neighbourhood. Part of this renewal includes reconstructing or removing accesses depending on whether the accesses are approved or not. Therefore, the property owner was notified that the existing front access would be filled in. The property owner subsequently applied for a Development Permit to keep the access and front parking area.
- [20] Parking is not allowed in the front yard of any residential zone, it is a violation of the *Bylaw*. The variances required to keep the front access driveway should not be granted because it is the intention of City Council to reduce the number of front accesses over time.
- [21] The Development Officer indicated that based on the requirements of the Mature Neighbourhood Overlay, with any future redevelopment on this Site (new Single Detached House or significant re-development of the existing house), the front access would have to be removed through an explicit condition in the Development Permit. New single detached houses in Allendale and other mature neighbourhoods are being developed with vehicular access from the lane and existing front driveways are being removed. This will result in a reduction in the number of front drive accesses in mature neighbourhoods over time.
- [22] The Appellant provided photographs, marked Exhibit A. They show that the existing driveway can accommodate two vehicles parked side by side. They also show other existing rear detached garages and the condition of the rear lane during the winter months. He acknowledged that the driveway has existed for many years, but stated that it is not grandfathered and therefore could be appealed.
- [23] The property owners ignored notice from the City to remove the driveway because it was their intention to keep it in addition to a new rear detached garage. You cannot have a rear garage with access from the lane and also have a front driveway.
- [24] A Development Permit to construct an addition to the house was issued in 2014 but the approved Site Plan did not show a front driveway. The addition was constructed but the driveway was never removed and is still being used for parking. If the property owners had marked it on the Site Plan, it would have had to have been removed at that time.

- [25] His objection is based on a bigger issue; this is not a simple variance. It will set a precedent altering infill development in Allendale. The aerial photograph contained in the Development Officer's report shows that if the property owners to the east decide to develop a front driveway as a result of this approval, it would require the removal of mature boulevard trees that would significantly change the appearance of the streetscape.
- [26] Mr. Morgan acknowledged the community consultation submitted by the property owners, but noted that the Allendale Community League President did not inform anyone and the committee to deal with these things was not aware of the proposed development until he brought it to their attention when he attended a meeting on May 10, 2018.
- [27] Mr. Morgan provided the following information in response to questions from the Board:
- a) This is the only house on this blockface with a front access driveway.
 - b) Parking has been overlooked for infill developments in mature neighbourhoods. As residents now have three or four vehicles per dwelling there are increasing strains on on-street parking. Parking is even more difficult during the winter months because of the buildup of snow and the condition of the rear lane. The new garages are too small to meet the parking needs of the new infill so more people park on the street.
 - c) He assumed that the property owners did not develop a two car detached garage because of the site coverage requirements.
 - d) His primary concern is the longer term overall impact of this development on the entire neighbourhood, not just his property.
 - e) He has a rear detached garage on his property. He does not have a front driveway.
 - f) The photographs of similar front driveways in the neighbourhood submitted by the Respondents do not confirm whether or not those properties also have rear detached garages on their properties.
 - g) The variances should not be granted because they now have a rear detached garage. Allowing parking in the front yard when the property also has a rear detached garage will set a precedent for other property owners to do the same.
 - h) Developers will ignore the *Bylaw* requirements and come to the Board to seek variances because it is easier to ask for forgiveness than permission.
- ii) *Position of the Development Officer, Mr. K. Bacon:*
- [28] The Development Authority did not appear at the hearing and the Board relied on Mr. Bacon's written submission.

iii) Position of the Respondents, Mr. S. Kumatycki and Ms. E. Andison, property owners and Mr. D. Deibert, contractor:

- [29] This house was purchased in 2013 and renovations, including construction of a rear detached garage, were completed in 2014. They were done as two separate applications. Mr. Deibert did the home renovations and another contractor did the garage.
- [30] The Respondents provided a copy of the Development Permit for the rear detached garage that was issued in July, 2014, marked Exhibit B. It included an old Real Property Report which shows the house prior to the renovations and the driveway.
- [31] Anyone who wants a front access driveway on their property will be required to apply for a Development Permit.
- [32] This driveway has existed at this location for over 35 years. It was their understanding that the development of a new house would require the removal of the driveway and because they were just renovating their house it could remain.
- [33] Photographs were referenced to illustrate that new houses are being built on 106 Street. Some have front driveways and some have rear detached garages.
- [34] Photographs of the property over time show that the driveway existed when they purchased it and the curb and boulevard have not been changed. Many houses in this area have rear detached garages as well as front driveways and some have front attached garages.
- [35] None of the most affected neighbours object to the existing front driveway. In fact an adjacent neighbour appreciates the driveway as the property owners allow it to be used by a disabled family member of that neighbour during visits.
- [36] The driveway does not contribute to the shortage of parking in this neighbourhood. There are three very large duplexes on this block that have replaced single detached houses. This has resulted in an increase in the number of vehicles. Two vehicles can be parked on the driveway which keeps two vehicles off the already congested roadway.
- [37] Mr. Kumatycki and Mr. Deibert provided the following information in response to questions from the Board:
- a) They acknowledge that the properties shown in the photographs are not on this block. Some are located on 69 Avenue and several more on 66 Avenue.
 - b) The driveway existed when they purchased the property and the previous owners used the driveway for additional parking spaces.

- c) A records search has been requested in order to obtain a copy of the Development Permit for the addition to the single detached house that was completed in 2014 but that request has not yet been completed.
- d) Mr. Deibert confirmed that the rear detached garage was built in 2014 after the house was renovated. The front driveway was included on the Site Plan submitted with the Development Permit application for the detached Garage, marked Exhibit B. It was his assumption that the contractor who built the rear detached garage submitted an outdated Real Property Report.
- e) Mr. Kumatycki referenced the Site Plan that was submitted with the application now under appeal and explained that he added the red outline of the driveway on March 23, 2018 at the request of the Development Officer as part of the current application. They acknowledge that Development Officer's report indicates that the driveway was not shown on the Site Plan submitted with the 2014 Development Permit application for the renovations to the house and do not take issue with that statement. However, Mr. Diebert, who is an experienced contractor, typically does not include this type of information on a Site Plan for renovations.
- f) Mr. Deibert explained that many development changes are occurring in this mature neighbourhood, including the subdivision of 50 foot lots and the development of garage and garden suites.
- g) He agreed with Mr. Kumatycki that the existing front driveway helps to alleviate on street parking congestion in this neighbourhood.
- h) They did consider removing the driveway during the Neighbourhood Renewal Program but the decision was made to retain the driveway to provide on-site parking for two of their children who are still living at home while attending the University of Alberta.

iv) Rebuttal of the Appellant

- [38] Mr. Morgan questioned the legality of the property owner adding information to the Site Plan after it was reviewed by the Development Officer.
- [39] He acknowledged that the driveway has existed at this location for a long time but argued that alone does not make it right. The property owners have developed the site with the intention of keeping the front driveway contrary to the law.
- [40] He has resided in this neighbourhood for 15 years and reiterated his concerns that in order to maintain the standards of the entire neighbourhood, variances should not be granted.

Decision

[41] 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

[42] The Development Permit under appeal is “To allow access of 67 Avenue NW and to park in the Front Yard of a Single Detached House.”

[43] The proposed development consists of a paved area which has been in existence on the subject lot for many years. It encompasses a vehicular access off 67 Avenue, a driveway and a parking area sufficient to park two vehicles side by side in the Front Yard. Originally, a portion of the paved area led past the west side of the house toward the Rear Yard and the remainder led to the front of the house. There was no Rear Detached Garage on the property before 2014.

[44] The Board considered the following background information:

- a) The Respondents bought the home in 2013. There is a note from the Development Officer that a Compliance Report issued by the City in September 2013 indicated that there was no permit for the front curb crossing and that parking was not allowed in a Front Yard.
- b) In 2014, the Respondents renovated the house and added a garage pursuant to two separate Development Permits.
- c) The Development Officer indicated that a Development Permit to construct an addition to the Single Detached House (City file 148391934-001) was issued in February 2014. A copy of this 2014 Development Permit was not provided to the Board. It involved removing a portion of the paved area to expand the house towards the west Side Lot Line.
- d) Based on the Development Officer’s report and the revised Site Plan sent in with the current application, the Board finds that the Site Plan for the home renovations did not show the existing front driveway and parking area which the Respondents intended to preserve.
- e) Another Development Permit (158010928-001) was issued July 24, 2014 “To construct an Accessory Building (detached Garage 6.71m x7.92m)” which authorized the construction of a separate detached Rear Garage accessed from the lane. That application included an outdated Real Property Report which was reviewed, stamped and approved pursuant to that application. It is dated August 21, 2013 and shows the Single Detached House as it existed prior to renovations and also shows all of the pre-existing paved areas, including the driveway, parking areas and paved space in the

Front Side and Rear Yards. The issued Garage Permit is silent with respect to the continuance of any of the pre-existing paved areas shown in that Real Property Report. (Exhibit B)

[45] The proposed development requires a variance to Section 814.3(17) of the *Edmonton Zoning Bylaw* which states

Regardless of whether a Site has existing vehicular access from a public roadway, other than a Lane, no such access shall be permitted to continue where an Abutting Lane exists.

[46] The Board finds that based on the evidence provided by the Development Officer, the Community Consultation requirements pursuant to Section 814.5 this potential variance of the *Bylaw* have been substantially satisfied. As a result of the consultation, four responses were received from notified property owners: three were in support and one was negative. No further details were provided by the Development Officer.

[47] The proposed development also requires a variance to Section 54.2.2.e.i which states:

Except as otherwise provided for in this Bylaw, parking spaces, not including Driveways, shall not be located within a Front Yard in a Residential Zone.

[48] The Appellant filed this appeal based on the following concerns:

- a) The development is non-compliant with applicable *Bylaws* and illegal. The paved area should have been removed when the house was renovated in 2014, but it was not disclosed. The Respondents have been ordered to remove it. Given these circumstances, no exceptions should be allowed.
- b) Approval of this development will set a far reaching precedent that, combined with ongoing infill in the neighbourhood, would encourage developers to seek front driveways contrary Council's intention to eliminate them in mature neighbourhoods and would ultimately destroy the aesthetic of this mature neighbourhood.
- c) Allowing the paved area to remain in the Front yard reduces the available on-street parking.
- d) The Respondents have also constructed a rear detached Garage and should not have both that Garage and a Front yard driveway/parking area.

[49] The Board acknowledges the Appellant's concern that the proposed development does not comply with two development regulations. However, the Respondents are seeking approval for variances to those development regulations. Variances are contemplated in the *Municipal Government Act*. The Court of Appeal decision *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 has directed this Board that it is an error to presume that the *Bylaw* creates a presumption of harm which must be rebutted by an applicant.

[50] The task before the Board is to focus on the impacts of variances and assess them in accordance with the test contained in Section 687(3)(d) of the *Act*, which states:

687(3) In determining an appeal, the subdivision and development appeal board

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

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

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

and

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

[51] In support of the proposed development, the Respondents submitted several photos of other front access Driveways and paved areas that enable parking in Front Yards. However, none of these properties are located on this blockface. Further, the Board received no evidence to establish other details concerning those paved areas including site conditions and whether or not those paved areas were illegal developments, legal non-conforming developments or permitted Driveway/ parking area developments for which variances had been granted. Therefore, the Board placed little weight on this evidence other than to note that front paved areas do exist on other lots in the wider neighbourhood, but not on this particular blockface.

[52] The Board also considered the Appellant's concern that allowing this development will set a negative precedent for subsequent construction by encouraging infill developers to seek front driveways which combined with the push for infill and densification would ultimately destroy the aesthetic intended by Council for mature neighbourhoods.

[53] The Board did not find this concern persuasive. This Board is not strictly bound by precedent. It must consider each development on its own unique merit and has done so in this case. The notion that granting a permit for this specific paved area (which has existed without complaint for over 35 years) will materially affect the direction of future new construction and lead to large scale proliferation of new front Driveways is speculative at best.

[54] The Board grants the required variances based upon the unique factors which exist in this case for the following reasons:

- a) The proposed development has existed on this Site as a paved area accommodating two side by side parking spaces for more than 35 years without any known complaint.
- b) There is community support for the proposed development. According to the Development Officer, the Community Consultation conducted by the Development Officer resulted in four responses, three positive and one negative. No response was received by the Board or the Development Officer from the Community League. There is evidence that the Community League was made aware of the development at the latest on May 10, 2018.
- c) The Respondents provided letters of support from three affected property owners, including owners of the abutting lots to the west and east. The two abutting property owners are the parties most affected by the development. The paved area is within plain view of their homes and given their proximity, they are most likely to be impacted by any loss of on street parking due to the front vehicular access.
- d) The subject lot is 14.33 metres in width. The paved area which includes a walkway occupies just under half the lot width. The balance of the Front Yard is taken up by a substantial green space consisting of lawn and mature landscaping.
- e) The parties agreed that parking in this area is in flux due to ongoing infill developments which are increasing density. None of them indicated that parking spaces are difficult to find on 67 Avenue. Based on the oral submissions of all the parties and the photographic evidence provided, the Board finds that there is currently no significant parking congestion on this blockface. Therefore, the variances required to allow parking to continue in the Front Yard will not materially impact the existing parking situation along 67 Avenue.

[55] For the above reasons, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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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Date: July 6, 2018
Project Number: 273692884-003
File Number: SDAB-D-18-093

Notice of Decision

- [1] On June 27, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 4, 2018. The appeal concerned the decision of the Development Authority, issued on May 7, 2018, to approve the following development:

Add an Automotive and Minor Recreation Vehicle Sales / Rentals Use to an existing General Industrial Use (Anant Motors).

- [2] The subject property is on Condo Common Area (Plan 0924508), located at 12245 - Fort Road NW and Plan 0924508 Unit 1, located at 12245 - Fort Road NW, within the IB Industrial Business Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- One Online response.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Speaking notes submitted by an affected property owner.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

i) Position of the Appellant, Mr. D. Bagan, representing Great Bear Mfg. Ltd.:

[8] Mr. Bagan referenced a long history of problems with the Applicant and the Condominium Corporation including breaches of provincial laws related to condominiums and the Condominium Bylaws as well as other prohibited activities.

[9] Automotive servicing and mechanical repairs are not allowed, but are occurring on the subject site. Other ongoing prohibited activities include the dumping of oil, car washes, as well as tire and brake repairs.

[10] The permit mentions space for outdoor display. There is not enough space on the subject site to accommodate display areas for vehicles on offer for sale.

[11] He did not receive notice of this development permit application either through the Condominium Corporation or the City of Edmonton. He was contacted by a colleague and then saw the notice in the newspaper.

[12] He operates his business from leased space in Unit 2. This unit is located immediately east of Unit 1, the site of the proposed development.

[13] There are two parking spaces located in front of his unit. None of the onsite parking spaces are designated for the use of specific businesses operating from this site. However the two stalls in front of his business are more or less assigned for his business.

[14] Common condominium property is located at the front of the building. Space behind the building is designated for the use of specific owners.

ii) Position of Affected Property Owners in Support of the Appellant, Mr. T. Tzanidis, representing Lustre-Ized Fur Care:

[15] Mr. Tzanidis reviewed his written submission, marked Exhibit A. He expressed concern that the proposed development will materially interfere with and affect the use of the currently shared parcel of land between the two buildings. This area is shared based on a mutual agreement between his landlord and the Applicant.

[16] This area is only 33 feet wide. He was told by the landlord that two thirds of the space belongs to his site, 12241 Fort Road. The area is fenced and includes locked gates at both the west and east ends. This only leaves 10 to 11 feet of space within the locked area for access and movement of five display vehicles on the flanking yard of their property. Two

cars would have to be turned at a 90 degree angle to be able to park on the rear loading dock at the east end.

- [17] The five parking spaces that the Applicant has for their retail business are not adequate which results in their customers using his customer parking spaces.
- [18] Security is also a concern because the shared property needs to be locked. He uses this area to load and unload expensive equipment and merchandise at his back loading door. Various fur items are also hung out during the day. The insurance coverage requires that the area remain locked and secure.
- [19] His Landlord, the owner of the adjacent building, provided written opposition to the proposed development because there is already a lack of parking and space to maneuver in this locked area and there is no room to park additional vehicles. Further, employees of other neighbouring businesses already occupy all the remaining spaces in front of the building.
- [20] An aerial photograph was referenced to clarify the details about the subject site, the adjacent site and the location of the shared area and locked gates on the land located between his building and the site of the proposed development.
- [21] The Applicant has been operating an Auto Repair/Mechanic Shop without the proper permits. He is not ensuring that the area remains locked and secure. Recently Mr. Tzandis has seen unidentified people opening the gates and leaving them unlocked which makes him concerned for his property. He fears this situation will worsen with the addition of the proposed development.

iii) Position of the Development Officer, Mr. P. Adams:

- [22] The Development Authority did not appear at the hearing and the Board relied on Mr. Adams's written submissions.

iv) Position of the Respondent, Mr. Thind:

- [23] Mr. Thind confirmed that he is one of the owners of 1735236 Alberta Ltd., a family business, and the owner of Bumper To Bumper, the business that is currently operating from Unit 1 at the far west portion of the commercial building on the subject Site.
- [24] For twenty years, he has had a hobby licence which authorized him to sell one or two cars per year. Recently an AMVIC licence inspector told him that he should apply for a retail licence to sell one car at a time to family and friends from a commercial location. This prompted him to apply to add the Automotive and Minor Recreation Vehicles Sales/Rental Use.
- [25] There are nine parking spaces located at the front of his Unit.

- [26] Some of his customer's vehicles have oil leaks or a missing tire but they do not repair vehicles.
- [27] He applied for his development permit so that he can sell one vehicle at a time mainly to friends and family. He needs the new licence so that the vehicles can come to the subject Site. Previously he operated on an auction to auction basis only.
- [28] Mr. Thind provided the following information in response to questions from the Board:
- a) The area identified in the Site Plan along the southwest wall of Unit 1 with marked parallel parking spaces is storage space that can accommodate 7 vehicles.
 - b) There is a 40 foot loading dock at the rear of the Unit where two additional vehicles could also be parked. It is large enough that vehicles could be double parked in this area.
 - c) No vehicle repairs occur on site. The cars currently in the locked area belong to his brother.
 - d) There are nine parking spaces located along Fort Road in front of his Unit and 7 parking spaces along the side of the building that are accessed through a locked gate.
 - e) Additional parking is also available inside the building.
 - f) He has no intention of selling recreational vehicles from this location.
 - g) He confirmed that the information provided in his application for a Development Permit is accurate. He has one dealer plate and his intent is to sell one vehicle at a time. Display space is not required for this development. He advised the Development Officer that he would not be displaying vehicles at this location.
 - h) He is not opposed to a condition being imposed on the permit that only one vehicle associated with this use can be stored on the site at any given time.
 - i) He is not opposed to a condition being imposed on the permit that an outdoor display area is not allowed.
 - j) Anant Motors is the name of his Wholesale Company.

iv) Rebuttal of the Appellant:

- [29] The Appellant reiterated his concerns about the activities that are occurring at this location without the proper permits and that the proposed Use will impact traffic and parking.

Decision

[30] 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 **ADDITIONAL CONDITIONS** imposed by the Board:

1. No more than one vehicle that is for sale or associated in any way with this Use can be stored on Site at any time.
2. There will be no outdoor vehicular display area associated in any way with this Use.

Reasons for Decision

[31] The proposed development, Automotive and Minor Recreation Vehicle Sales/Rentals is a Discretionary Use in the IB Industrial Business Zone.

[32] The subject Site contains a condominiumized commercial building with common property to the front for shared parking and individual loading areas to the rear. There is also a small fenced secure outdoor storage area to the west of the building. This area is located on the subject site and on a portion of the adjacent lot. It is accessed through locked gates and used by both the Applicant and the adjacent business owner to the west.

[33] The Appellant is the tenant and former owner of Condo Unit No. 2 which abuts the Applicant's property, Condo Unit No. 1. The Appellant raised two objections to the issuance of the Development Permit. First, he was concerned about business practices and activities occurring on site that contravene provincial laws, Condominium Bylaws and City Bylaws. Second, as an immediately adjacent business operator, he was concerned with parking congestion and the incremental impact of allowing another Use which incorporated outdoor display areas.

[34] The Board notes that the subject matter under appeal is the issuance of a Development Permit authorizing an Automotive and Minor Recreation Vehicle Sales/Rentals Use. Alleged financial and other infractions of applicable Condominium Bylaws are private matters between the Appellant and the Applicant that are addressed in other forums through separate legal mechanisms. Alleged contraventions of the *Edmonton Zoning Bylaw* including unauthorized auto repair activities are separate enforcement matters not related to the requested Development Permit. Those activities are also outside the purview of the Board in this particular appeal.

[35] The owner and the tenant of the immediately adjacent property to the west objected to the proposed development based on concerns regarding security and the improper use of a shared, secure outdoor storage area as well as lack of space to accommodate vehicles for the proposed Use in this area.

- [36] As this appeal involves a Discretionary Use, the Board first considered whether or not the proposed Automotive and Minor Recreation Vehicle Sales/Rentals Use was reasonably compatible with surrounding land uses. The Board found that it was for the following reasons:
- a) The general purpose (in part) of the IB Industrial Business Zone per section 400.1 is “to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses.” The proposed commercial Use is consistent with this purpose.
 - b) Based on the evidence provided, the proposed Use involves limited business activity and no nuisance impacts given the two conditions which have been imposed by the Board to restrict the number of stored vehicles to one at any time and to prohibit any outdoor vehicular display area.
 - c) This is a purely industrial/commercial area where customers and commercial vehicles, including large delivery trucks, come and go on a regular basis. The adjacent Uses to the west and east are also mixed commercial/industrial Uses.
 - d) The existing principal Use on the subject Site, General Industrial Use involves storage and buying and selling of automobile parts. The proposed Use will share administrative space with this business. These two uses are compatible.
- [37] The Board finds no evidence of a valid planning reason to deny the proposed Discretionary Use, Automotive and Minor Recreation Vehicle Sales/Rentals, at this location.
- [38] The Board next considered the issue of parking and a potential parking variance.
- [39] The landlord and tenant of the adjacent property were concerned with on street parking and the use of the locked shared outdoor space currently used by themselves and the Applicant for loading, storage and parking. The Appellant expressed concern that the new development would exacerbate existing parking issues in the common parking spaces located on the subject Site, particularly in front of his abutting unit.
- [40] Based on the submissions of the parties and the site plan submitted with the application, the Board notes that the parallel spaces located along the south west wall of the principal building within the secure shared area are used for additional vehicle storage and are not included in the on-site parking space calculations.
- [41] The shared use of this space is governed by private agreement between the Applicant and the adjacent landowner. No variance is required for outdoor storage associated with the proposed development.

- [42] The Development Officer determined that a total deficiency of 9 on site parking spaces was previously authorized for all the businesses on the entire the subject Site. Upon review of the Development Permit application, he also determined that the existing aggregate variance in parking will not change and the addition of the proposed Automotive and Minor Recreational Sales/Rental Use will not increase the total rounded up parking requirement of 6.0 spaces previously required for the Applicant's approved General Industrial Use. The Board accepts the determination of the Development Officer that no new variance is required for either the aggregate number of required parking spaces, nor the number of parking spaces attributable to the Applicant's two Uses located in Unit 1.
- [43] Given that the number of required on site parking spaces are not changing and that the two conditions imposed by the Board limit the scale of the proposed development, the Board finds it unlikely that the proposed development will materially exacerbate the parking situation.
- [44] For the above reasons, the Board finds that the proposed development is reasonably compatible with surrounding Uses and also that it 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.