



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 11, 2018
Project Number: 271687264-001
File Number: SDAB-D-18-069

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on May 23, 2018, made and passed the following motion:

“The hearing of this matter has been adjourned to June 27, or June 28, 2018.”

- [2] On June 28, 2018, the Board made and passed the following motion:

“That SDAB-D-18-069 be raised from the table.”

- [3] On June 28, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 10, 2018**. The appeal concerned the decision of the Development Authority, issued on March 15, 2018, to approve the following development:

Change the Use from a Professional, Financial and Office Support Services to a Child Care Services (122 children) and to develop an outdoor playspace (remove 6 parking spaces).

- [4] The subject property is on Plan 1524442 Blk 20 Lot 85, located at 6060 - Andrews Way SW, within the DC1 Direct Development Control Provision (Bylaw 17739) (the “DC1 Zone”). The Ambleside Neighbourhood Structure Plan and the Windermere Area Structure Plan apply to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s original submission and supporting documentation;
- The Respondent’s written submission from Legal Counsel;
- One e-mail in opposition from an affected property owner and a written submission from Legal Counsel for the affected property owner.

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

- Exhibit A - Photograph 1 showing sidewalk leading from cul-de-sac to proposed development (from the Appellant)
- Exhibit B - Photograph 2 showing sidewalk leading from cul-de-sac to proposed development (from the Appellant)
- Exhibit C - Petition from the Appellant
- Exhibit D - Photograph of sidewalk leading from cul-de-sac to proposed development (from an affected property owner)

Preliminary Matters

[7] 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.

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

[9] 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*").

[10] The Presiding Officer explained that, because the proposed development is located within a Direct Development Control Zone, the jurisdiction of the Board is limited by section 685(4) of the *Municipal Government Act*, which states:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[11] The Appellants were advised that the Board cannot vary the Development Authority's decision unless it is satisfied that the Development Authority did not follow Council's directions. Accordingly, the Appellants were asked to indicate how the Development Authority failed to follow Council's directions, specifically with respect to the relevant zoning regulations.

Summary of Hearing

i) Position of the Appellants, Ms. C. De Boer and Mr. C. De Boer

- [12] Their main concern is that insufficient parking is provided to accommodate the drop-off / pick-up spaces plus staff parking requirements for a Child Care Service with 122 children.
- [13] Allowing this development would not meet the General Purpose of the DC1 Zone, which is to accommodate low intensity commercial and residential mixed-use development. The purpose is to complement the adjacent residential and employment uses with a transition of mixed compatible uses. Development regulations shall create a pedestrian-friendly environment and complement adjacent development through urban design controls and guidelines.
- [14] The maps that were reviewed by the Development Officer do not show the walkway that runs from Andrews Way SW, the street the proposed development is on, to the walkway connecting to their cul-de-sac. They identified this walkway with photographs they submitted (*Exhibits A and B*). In their opinion, the two walkways will allow parents to park on their cul-de-sac when they drop-off children at the proposed Child Care Service. They submitted a petition from neighbourhood residents who share their concerns (*Exhibit C*).
- [15] A Child Care Service for 122 children would require up to 20 employees which potentially could occupy 20 parking spaces. The entire complex has approximately 39 parking spaces and an additional 13 required pick-up and drop-off spaces would take up a majority of the available parking spaces. This does not leave many parking spaces for the remaining three units in this complex which are not yet occupied.
- [16] Three other Child Care Services currently operate in the vicinity, including one that is 60 metres from the proposed development. There are already traffic problems during peak hours in this area.
- [17] The Appellants provided the following responses to questions from the Board:
- a) While the Development Officer may have followed the applicable regulations in granting this development, they are still concerned about the parking.
 - b) The building for the proposed development faces Andrews Way. There is only parking available along one side of that roadway and that parking is limited due to the presence of three fire hydrants.

ii) *Position of an Affected Property Owner in opposition to the proposed development*

- [18] Ms. O. Oladipo of Dentons Canada LLP appeared as Legal Counsel for Ms. S. J. Martinez, an affected property owner. Ms. Martinez was also present.
- [19] The proposed development should be viewed as two separate applications. The first application is to change the Use to a Child Care Service. The second application is to develop an outdoor play space by removing six parking spaces.
- [20] Ms. Oladipo questioned the parking stall numbers provided in the Respondent's application, specifically Section C (*Vehicular Parking Demand – Existing Uses on Site*) and Section D (*On site Parking Available*). According to her calculations parking variances have already been granted and the proposed development will require additional variances to remove six parking spaces for the outdoor play space.
- [21] She referred to the Child Care Licensing Regulation which outlines staffing requirements. This legislation is relevant as it supports their calculations that 20 parking spaces will be required for staff.
- [22] The Development Officer did not follow the directions of Council because any development must complement adjacent residential and employment uses. If this development is granted the existing parking issues in this growing area will be exacerbated. The practical reality is that one Child Care Service in close proximity to another will affect parking.
- [23] Available parking along Andrews Way is limited by the existence of three fire hydrants and parking is only permitted along one side of the roadway as per the photographs in her submission. Further, there are two access points to the subject building near one of the hydrants which further restricts available parking.
- [24] While the Respondents indicated in their application that the majority of the staff will most likely take public transportation, there are no close bus routes available. Ms. Oladipo referred to page seven of her presentation which shows a bus stop sign indicating "Future Service". Twenty plus employees will not be able to use transit.
- [25] Ms. Oladipo referred to section 687(3)(d) of the *Municipal Government Act* which is the test for the Board regarding variances.
- [26] Ms. Oladipo provided the following responses to questions from the Board:
- a) She acknowledged there is no legal basis to say Child Care Service Uses cannot be located adjacent to each other. However, the practical use must be considered and an additional 122 children will put pressure on the area.
 - b) She referred to Bylaw 17643 and arrived at her parking calculation of 28 required parking spaces by allowing 13.2 spaces for pick-up/drop and 14.7 spaces for

employees. This calculation does not include parking spaces for deliveries. Her client made the parking calculations based on information received from the City.

The Presiding Officer indicated that Bylaw 17643 was passed by Council on May 25, 2016 and employee parking per Section 54.2, Schedule 1(A)(31)(b) was amended under Bylaw 17831 on November 28, 2016.

[27] Ms. Martinez provided the following comments:

- a) It is important to determine that the parking requirements have been calculated correctly.
- b) The Child Care Licensing Regulation is important as it speaks to the number of employee parking spaces required which affects the enjoyment of the neighbourhood and the area.
- c) Ms. Martinez referred to a photograph on her phone of the same walkway mentioned by the Appellants taken from a different angle (*Exhibit D*).
- d) There is no Transit Centre located within 400 metres of the subject site. The closest Centre is at 23 Avenue and Leger Way.

iii) Position of the Development Officer, Ms. S. Buccino

[28] The Development Authority provided a written submission and did not attend the hearing.

iv) Position of the Respondent, 1932587 Alberta Ltd.

[29] Ms. V. Giannacopoulos of Ogilvie Law appeared to represent the Respondent, Mr. S. Turna, the Applicant, and Mr. K. Cheriyan and Ms. S. Cheriyan, the building owners.

[30] As this is an appeal of a development in a Direct Control District, the scope is limited by section 685(4)(b) of the *Municipal Government Act* which directs that the Board must first determine if the Development Authority followed the directions of Council.

[31] Their position is that the permit was issued with no variances. Child Care Services is listed as a permitted use; therefore, it was Council's intention to allow Child Care Services in this zone. No evidence was provided to indicate any type of variance is required regarding the outdoor play space.

[32] There was much discussion about the parking requirements. Their overall submission is that the Development Officer properly calculated the parking requirements at 14 on-site spaces plus one pick-up/drop-off space located along the roadway. No variance is required for this space. The Development Officer properly consulted with Transportation Services who provided their written consent.

- [33] There are three bus routes (Routes 24, 25 and 324) within the 400-metre perimeter they are required to have under Section 54.2, Schedule 1(A)(31)(b)(ii) of the *Edmonton Zoning Bylaw* when calculating employee parking requirements.
- [34] It is difficult for her to speak to how the Development Officer conducted her calculations regarding the required parking spaces. Ms. Giannacopoulos reviewed her own calculations of the required parking spaces. Two spaces are required for the first 10 children with an additional stall for each additional 10 for a total of 13 spaces. 1.5 spaces are required for staff parking for a total of 14.5 spaces or 15 spaces.
- [35] Ms. Giannacopoulos provided the following responses to questions from the Board:
- a) She was not certain if the roadway the bus routes run along is considered a Transit Avenue under the *Edmonton Zoning Bylaw* and did not know the exact location of the nearest Transit Centre.
 - b) There are 34 parking spaces currently available on the subject site. The parking spaces associated with future tenants will have to be dealt with at the time the permits are issued. It is currently not known what types of tenants will be occupying those spaces and what their parking requirements will be.
 - c) She reiterated that Transportation Services was satisfied that the parking requirements for the proposed development have been met and have provided their written consent.
 - d) The Development Permit does have a stipulation that all other regulations have to be complied with.

A short recess was granted by the Presiding Officer to allow the Respondents time to determine the location of the nearest transit facilities.

- e) The nearest bus stop is at Windermere Drive and Allan Drive. They were not able to locate the nearest Transit Centre or Transit Avenue and stated that the map found in Appendix I under the definition of Transit Avenue may not be up-to-date.
- [36] Their position is that the parking requirements have been calculated properly and the permit was issued in accordance with Council's directions and no variances are required.
- v) *Rebuttal of the Appellants*
- [37] The nearest Transit Centre is located at the Terwilleger Recreation Centre which is at least three kilometres away. The next closest is Century Park which is at 23 Avenue and 111 Street, a ten minute car ride.
- [38] They cannot comment on the bus routes referred to by the Respondents other than Route 24 which runs every 30 minutes.

- [39] They can see the constant traffic from their window. The other Child Care Service has 27 parking spaces for 110 children and they have a parking problem. The learning centre next to it also has issues with parking.
- [40] They question the material provided by the Development Officer and reiterated that there is clearly a walkway from Andrews Way leading to the walkway to their cul-de-sac.

Decision

- [41] The appeal is **DENIED** and the decision of the Development Authority is **VARIED**. The development is **GRANTED**.
- [42] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required number of 19 parking spaces per section 54.2, schedule 1(A)(32) is varied to allow a deficiency of 4 parking spaces, requiring 15 parking spaces, one of which is an off-site pickup/drop-off space on Andrews Way SW.
- [43] The development is subject to the following Conditions:
1. The proposed Development shall be carried out in accordance with the approved plans. Any revision to the approved plans, including the increase in the number of approved children, and/or expansion of the outdoor playspace, shall require a separate Development Permit application.
 2. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a minimum Setback adjacent to a public roadway, public walkway or a residential zone. Vehicular parking, loading, storage and trash collection areas shall be screened from view from any adjacent Sites or public roadways in accordance with Section 55. (DC1. Bylaw 17739 Section 4.h)
 3. The outdoor playspace shall be Fenced on all sides, and gates shall be self-latching (Section 80.3.a)
 4. Passenger pick-up/drop-off spaces shall be designated with signs to reserve the parking spaces for Child Care Service pick-up/drop-of. (Section 52.2 Schedule 1(32)(a)(i).
 - 4.a) The applicant must contact Brian Waddell, Parking Services at 780-944-5657 to arrange for the on-street passenger loading zone signage to be installed. There is an associated cost for the two (2) signs that must be paid by the applicant

ADVISEMENT:

1. Signs require separate Development Applications.

Reasons for Decision

[44] This is an appeal of a decision made by the Development Authority with respect to a Development Permit application for a Child Care Services Use in (DC1) Direct Development Control Provision (Bylaw 17739) (the “DC1 Zone”). Child Care Services is a listed Use in this Zone.

[45] Section 685(4) of the *Municipal Government Act* states that:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

[46] Accordingly, the Board does not have the authority in such a case to vary the decision of the Development Authority unless it determines that the Development Authority did not follow the directions of Council. In this case the Board has determined that the Development Authority made an error in calculating the parking requirements for the proposed development.

[47] The DC1 Zone provides in section 4(i) that parking shall be in accordance with Section 54, Schedule 1 of the *Edmonton Zoning Bylaw* (the “*Zoning Bylaw*”).

[48] With respect to Child Care Services, Schedule 1(A)(31) of the *Bylaw* provides as follows:

31. Child Care Services

a) Passenger pick-up/drop-off spaces shall be provided at the rate of 2 pick-up/drop-off spaces for the first 10 children, plus 1 additional pick-up/drop-off space for every 10 additional children.

i) Passenger pick-up/drop-off spaces shall be designated with signs to reserve the parking spaces for Child Care Service pick-up/drop-off, to the satisfaction of the Development Officer.

ii) Passenger pick-up/drop-off spaces shall be located as close as possible to the main entrance used by the Child Care Service, and shall not be located further than 100 m from the main entrance used by the Child Care Service. The distance between the farthest

parking space in the pickup/drop-off area and the main entrance of the Child Care Service shall be measured along the shortest publically accessible pedestrian route.

- iii) An on-street loading zone shall satisfy a portion of the passenger pick-up/drop-off parking space requirement without a variance if the Development Officer, after consultation with Transportation Operations, is satisfied with the proposal.

b) employee parking shall be provided at the rate of:

- i) 1 parking space per 100.0 m² of Floor Area; or
- ii) 1 parking space per 360.0 m² of Floor Area where the Child Care Service is proposed within 400 m of an LRT Station, Transit Centre, Transit Avenue, or all Lots within the boundaries of the Oliver Area Redevelopment Plan, as adopted by Bylaw 11618, as amended, or all Lots within the boundaries of the Strathcona Area Redevelopment Plan, as adopted by Bylaw 11890, as amended; or
- iii) Where the Child Care Service is for a dayhome/group family care providing care to 7 or more children within the residence of the child care provider, 1 parking space for each non-resident employee, in addition to the parking required for the primary Dwelling. Where a Front Yard Driveway provides access to a parking space that is not within the Front Yard, the Development Officer may consider this Driveway as the provision of a parking space that is in tandem.

[49] The Development Officer calculated that there would be 15 parking spaces necessary for the proposed development. It appears that this calculation was based on the employee parking being calculated as if there were an LRT Station, Transit Centre or Transit Avenue within 400 metres of the proposed development as per Schedule 1(A)(31)(b)(ii), meaning 1.4 employee parking spaces would be required. That, together with the 13.2 pick-up/drop-off spaces required by Schedule 1(A)(31)(a), results in a requirement of 14.6 rounded up to 15 parking spaces in total. One of those parking spaces is on-street parking, which was approved by Transportation Services in accordance with Section 54.2, schedule 1(A)(31)(a)(iii) of the *Zoning Bylaw*.

[50] The Board is satisfied that the Development Officer did follow the directions of Council in calculating the 13.2 pick-up/drop-off spaces required by Schedule 1(A)(31)(a) and in approving one off-site pick-up/drop-off parking space requirement in an on-street loading zone on Andrews Way SW without a variance as per Schedule 1(A)(31)(a)(iii).

[51] However, it appears that the Development Officer made an error in calculating the number of employee parking spaces. Unfortunately, the Development Officer did not

attend the hearing to explain why she apparently based her calculations on there being a Transit Centre or Transit Avenue within 400 metres of the proposed development. The only evidence before the Board is that there is no Transit Centre or Transit Avenue, as those terms are defined in the *Zoning Bylaw*, within 400 metres of the proposed development. Accordingly, the appropriate calculation for employee parking is under section 54.2, schedule 1(A)(31)(b)(i) of the *Zoning Bylaw* that states “employee parking shall be provided at the rate of 1 parking space per 100 square metres of Floor Area” which means that 4.9 employee parking spaces are required for a total of 18.1 parking spaces, which rounds up to 19 parking spaces required.

[52] Because the Development Officer erred in her calculations, she did not follow the directions of Council. Accordingly, pursuant to the provisions of section 685(4)(b) of the *Municipal Government Act* this Board may substitute its decision for the Development Authority’s decision to ensure that Council’s directions are followed.

[53] The question now becomes whether the shortfall of four parking spaces should be granted a variance. The Board must determine this based on the variance power that the Development Officer has. (*Garneau Community League v Edmonton (City)*, 2017 ABCA 374 at para. 29)

[54] The DC1 Zone is silent about the Development Officer’s variance power. However, Section 710.4(5) of the *Zoning Bylaw* states that:

All regulations in this Bylaw shall apply to development in the Direct Development Control Provision, unless such regulations are specifically excluded or modified in a Direct Development Control Provision.

[55] Section 710.4(5) brings into play Sections 11.3 and 11.4 of the *Zoning Bylaw*. Dealing first with section 11.4(1), the Development Officer is not allowed to grant variances unless there are cases of unnecessary hardship or practical difficulties peculiar to the Use with respect to the proposed development. In this case the Board is of the view that there are practical difficulties peculiar to this Use at this Site. Because of the requirement for an outdoor play area, six parking spaces are required to be eliminated from the general parking for the shared use parking lot. This restricts the number of on-site parking spaces available to the proposed development that other Uses on the Site would not be facing. Accordingly, the Board feels that, because of these practical difficulties, the Development Officer, and therefore this Board, can consider a variance under Section 11.3.

[56] Section 11.3(1) states that:

The Development Officer may approve, with or without conditions as a Class B Discretionary Development, an application for development that does not comply with this Bylaw where:

- a. the proposed development would not, in their opinion:
 - i. unduly interfere with the amenities of the neighbourhood; or

- ii. materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- b. the proposed development would, in their opinion, conform with the Use prescribed for that land or building in this Bylaw.

[57] In terms of allowing a variance, the Board is of the view that a four parking space variance can be allowed in this situation for the following reasons:

- a) The Board notes that, although there are no Transit Centres or Transit Avenues located within 400 metres of the proposed development, there are a number of bus routes nearby that would tend to mitigate the need for having employee parking spaces available on the subject Site.
- b) The proposed development will share a parking lot with a number of other Uses. The Board notes that the on-site pick-up/drop-off spaces will only be used in the morning and evening hours; therefore, allowing the variance will not significantly impact the availability of parking for other users of the parking lot most of the time.
- c) Although the Appellants and a number of neighbours in the residential area located to the west of the proposed development were concerned about parents parking in their neighbourhood to pick-up and drop-off children, the Board notes that there is no direct vehicular access between Andrews Way, where the proposed Child Care Service is located, and their neighbourhood. To get to the cul-de-sacs on Allan Landing SW or Ainslie Court SW, parents in vehicles would have to take a circuitous route. The Board does not think this is likely to happen to any significant extent. The Board is of the view that most, if not all, of the traffic related to the proposed development will be on Andrews Way SW rather than in the residential neighbourhood. Also, many of those who are concerned live a considerable distance from the proposed development. The Board is of the opinion that the majority of them will not be affected by the variances.
- d) Ms. Martinez, who operates a nearby Child Care Services facility on Andrews Way, was also concerned about parking problems. The Board is of the view that the parking variance granted will not significantly exacerbate parking issues on Andrews Way.

[58] There were representations made in the written submissions that the value of properties in the residential neighbourhood would decrease because of the proposed development but the Board did not hear any evidence to substantiate those claims.

[59] Other claims were that there were too many Child Care Services in close proximity and that children would access the green space surrounding the storm drainage pond in the residential neighbourhood to the west. However, no evidence was presented to show how this would be in contravention of Council's directions.

[60] All things considered the Board is of the opinion that the proposed development with the parking variance 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.



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

Board Members in Attendance:

Ms. P. Jones; Ms. K. Thind; Mr. R., Handa; 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.