

Edmonton Subdivision and Development Appeal Board

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Date: July 15, 2015
Project Number: 167470392-001
File Number: SDAB-D-15-139

Notice of Decision

This appeal dated June 4, 2015, from the decision of the Development Authority for permission to:

Construct a General Industrial and Commercial Use Building

on Plan 0729580 Blk 1 Lot 45, located at 1803 - 91 STREET SW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 30, 2015. The decision of the Board was as follows:

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a General Industrial and Commercial Use Building, located at 1803 - 91 Street SW. The subject Site is zoned EIB Ellerslie Industrial Business Zone. The development was approved with conditions with a variance granted in the number of required off-street parking spaces. The approved development permit application was subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A submission which included a revised Site Plan, top view of the building, 3D elevation drawings of the building, landscape layout, rendering of the garbage disposal system, and a summary of the parking study conducted by JCB Engineering dated March 23, 2015 from the Respondent on June 26, 2015.
- A written submission received from Sustainable Development on June 26, 2015

The Board heard from the first Appellant, Mr. Gunderson, representing Ninety-One Business Park Inc., who provided “Exhibit A” which includes a review of parking provisions and market analysis on different business center developments and made the following points:

1. He provided the Board with an overview of his presentation and highlighted business center developments that he built in the immediate surrounding area which are within the Ellerslie Industrial Business Zone. He indicated that his developments provide an excess of parking spaces in all cases.
2. The proposed development does not provide the minimum required number of parking spaces.
3. Parking issues have increased in the immediate area where people are parking their vehicles at his site and visiting other buildings within walking distance.
4. Based on the proposed key plan and configuration of the floor plan of the building, the utilization of industrial space in this development is not realistic and is more reflective of Professional, Financial and Office Support Services; Health Services; Personal Service Shop; and Convenience Retail Stores.

In response to questions by the Board, Mr. Gunderson provided the following information:

1. He believes employees and customers will drive to the subject site rather than utilizing alternate modes of transportation such as a bus or a bicycle.
2. He has provided the required number of parking spaces for his property and there is still parking issues on adjacent sites.
3. He acknowledged that it is not possible to know all the uses or types of businesses that will go into a building shell such as this one at the time of construction, and estimation must be made to determine the type of businesses and the number of parking spaces required. The proposed uses for the building and the number of required parking are reflective of the types of business centers in the Ellerslie Industrial Business Zone.

The Board then heard from the second Appellant, Mr. Perry, representing Perry Signature Homes who made the following points:

1. He is a developer in the area and owns four buildings in the immediate area that are within the Ellerslie Industrial Business Zone.
2. He has provided four parking spaces for every 1000 square feet of floor area.
3. He finds that parking is sometimes inadequate even with the ratio of parking spaces he has provided with his developments.
4. In his opinion, people will use his property to park and walk to the subject site as it is within walking distance.
5. In his opinion, the *Edmonton Zoning Bylaw* requirements are the minimum required for the subject site.
6. In his opinion, the proposed development will not be used for industrial uses but rather for office uses.

The Board then heard from Mr. Haldane, Legal Counsel for the Respondent, Abanoub Development Ltd., who made the following points:

1. A variance was granted for 11 parking spaces and with the redesign of the subject site as shown on the revised site plan they have reduced the variance to 6 parking spaces which he thought would address any concerns.
2. The deficiency in parking spaces will not materially interfere with the amenities of the neighbourhood or affect the use, enjoyment or value of neighbouring properties.

The Board then heard from Mr. Kirolos, representing the Respondent, Abanoub Development Ltd., who made the following points:

1. He is an architect and the developer and has constructed schools, churches, and other such buildings in the past.
2. The proposed use is permitted in the EIB Ellerslie Industrial Business Zone.
3. The revised plan provides for 89 parking spaces. They have removed the proposed garbage receptacle and replaced it with a Molok Garbage System. This allowed for the provision of three additional small car parking spaces.
4. The power transformer was removed to allow for an additional parking space.
5. There will be 1.2 metres between the transformer and the parking space.
6. There is only one entrance to the subject property oriented to the south and no access is provided from the subject site to the adjacent property, located to the north.
7. There will be several signs to identify the businesses on the subject Site.
8. Garbage bins will be emptied after hours which will not create access issues.
9. The various businesses on the subject site will have a variety of business hours and many of the businesses will be by appointment only.
10. The industrial or warehouse businesses will be located at the rear of the building and the professional offices will be located in the front of the building and on the second floor.
11. If parking is not available at the front, customers can park at the rear of the subject site.
12. The proposed building will enhance the area.
13. In his opinion, there will be sufficient parking.

The Board then heard from Mr. Barrett, who made the following points:

1. He is a transportation engineer and provides consulting for businesses.
2. He calculated the overall parking requirement based on the Institute of Transportation Engineers Parking Generation Manual (4th ed.). The calculation was not based on the uses with the lowest parking requirements but on a mix of uses that would be typical for this type of development.
3. The Manual allows two ways to calculate parking for industrial uses. One is based on gross floor area and the other is based on the number of units.
4. If the parking requirements are calculated based on the gross Floor Area, fewer spaces are required.

5. If the parking is calculated based on the number of units, more are required. However, if a tenant occupies more than one unit, fewer parking spaces are required.
6. He has based the parking requirement on the higher method of calculating, that of number of units.
7. Even though alternate means of transportation to the site are available, such as public transit, walking and cycling, he did not reduce the calculated number of parking spaces required based on this.
8. Based on his analysis using the guidelines in the Manual, an upper limit of 84 parking spaces are required. The Zoning Bylaw is more conservative and requires 95 spaces.

Mr. Haldane made the following points in summary:

1. The Zoning Bylaw is conservative regarding parking because how the development will be used is unknown.
2. The parking study provided takes into account the types of uses likely to be made of the building.
3. There is a residential development immediately to the east with a regional walkway.
4. The commercial uses assumed in the parking study are conservative regarding parking requirements.
5. The site plan shows there is no physical connection to adjacent developments.
6. The orientation of the buildings shows that people won't park at the back of the site to access the front.
7. The Appellants' evidence about parking problems at their developments is anecdotal. They provided no hard evidence regarding uses or access between sites, nor did they provide photos.
8. The detailed analysis by the Respondent's engineer demonstrates that the proposed number of parking spaces is adequate.
9. For example, units 105 and 106 are expected to be used by a dentist or other health care professional but if they are used for office space, less parking will be required.
10. Also, for the warehouse units, if one owner has two units, less parking will be needed.

In response to questions, Mr. Haldane provided the following information:

1. The revised site plan provides 89 parking stalls, meaning there is a shortfall of 6.
2. He acknowledged that some of the small car parking stalls are smaller than the minimum length allowed.
3. He visited the Appellants' developments last week and observed a surplus of parking spaces on a typical work day, demonstrating that their parking issues are not as bad as they claim.
4. The proposed development will have a significant amount of warehouse space. The Appellants' buildings have more office space, which requires more parking.
5. The Appellants provided no evidence as to when parking was an issue or for how long.
6. He acknowledged that the new site plan appears to have improperly included two loading spaces in the number of available parking spaces.

7. He acknowledged that they do not know how the bare units in the proposed development will be used by the owners and those uses may be different from the assumptions made.

The Board then heard from Ms. Li, representing Sustainable Development, who made the following points:

1. She stated that three parking spaces must be eliminated from the revised site plan. Two of these spaces impede on the loading area and one of the proposed small car vehicle space protrudes into the drive isle. Based on her calculation, three parking spaces have been added to the original 84 parking spaces for a total of 87 parking spaces.
2. She determined the minimum required number of parking spaces by using the highest possible requirement for provision of parking spaces and by looking at each land use according to the *Edmonton Zoning Bylaw*.
3. The parking requirements are not based on the time of day and the highest frequency of visits.
4. There are multiple ways to access the subject site without vehicles. There are three bus stops in close proximity to the subject site. She believed that not all customers will drive to the subject Site and some will take transit.
5. If a lower intensity use is proposed in the future, the parking requirement will be lower than the one she has calculated. If there is a change of use within the building that increases the current parking requirement, a variance will be required and the neighbouring property owners will be notified.

In rebuttal, Mr. Gunderson made the following points:

1. He would like clarification on what the parking calculation is and how many parking spaces should be required.
2. It is the obligation of the Respondent to provide parking for customers and employees to access the subject site and the proposed development must provide the minimum number of parking spaces required by the *Edmonton Zoning Bylaw*.
5. He reiterated the proposed development will not be a general industrial use but a professional, financial and office support services; health services; personal service shop; and convenience retail stores or other uses with greater parking needs.

Mr. Perry did not have anything to add in rebuttal.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for, subject to the following CONDITIONS:

1. PRIOR TO THE RELEASE OF DRAWING FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$220.00.

2. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge (SSTC) fee of \$5719.48. All assessments are based upon information currently available to the City. The SSTC is applicable to the entire property of 0.7242 ha at the rate of \$7,152/ha. The SSTC charge is quoted at year 2015 rate. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250-101 Street, NW.

DRAINAGE ADVISEMENTS:

- The above assessment is made based on information currently available to our Department.
- Should such information changes in the future, a new assessment will have to be made.
- In addition to the above items, if required, the applicant/owner shall pay for the installation cost of sewer services to property line. For detail, please contact Derek Kucy of Public Services Section at 780-496-5450.

- More information about PAC, EA, and SSTC assessments can be found on the City of Edmonton's website: www.edmonton.ca

3. **PRIOR TO THE RELEASE OF DRAWING FOR BUILDING PERMIT REVIEW**, the owner must enter into a Municipal Improvement Agreement with the City for the following improvements:
 - a) Construction of an 8m curb return access including curb ramps, located approximately 8.5m north of the south property line;
 - b) Removal/Relocation of two existing boulevard trees.

The Municipal Improvement Agreement must be signed **PRIOR** to the release of the drawings for Building Permit review. The Agreement must be signed by the property owner and returned to Transportation Services to the attention of Mohammed Bashar (780-496-1799) including an irrevocable Letter of Credit in the amount of \$40000.00 to cover 100% of construction costs. The Agreement will be forwarded directly to the owner for his signature. Once signed, the owner is required to have a Civil Engineer submit stamped engineering drawings for approval by the Transportation Services.

TRANSPORTATION ADVISEMENTS:

- Arterial Roadway Assessments were previously paid for this site, and therefore are not owed under this development application.
- 8) Landscaping shall be in accordance to the approved landscape plan, Section 55 and to the satisfaction of the Development Officer. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

- a) cash to a value equal to 100% of the established landscaping costs; or
- b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6.

- 9) The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6 of the Edmonton Zoning Bylaw.
- 10) Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
- 11) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices in accordance with Section 51 of the Edmonton Zoning Bylaw.

NOTES:

- 1) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 2) Signs require separate Development Applications.
- 3) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
- 5) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

In granting the development the following variances to the *Zoning Bylaw* are allowed:

1) Pursuant to Section 54.2. Schedule 1, the overall required off-street parking reduced from 95 spaces to 82 parking spaces.

Reasons for Decision:

The Board finds the following:

1. The proposed development consists of Uses listed in the EIB Ellerslie Industrial Business Zone.
2. The Respondent submitted a revised Site Plan providing additional parking spaces. However, it is evident that three parking spaces do not meet the minimum parking dimensions. This means that the Site Plan would have to be further revised. Accordingly, the Board has based its decision on the original Site Plan that forms the basis of this appeal.
3. The Board accepts the evidence submitted that two of the 84 parking spaces shown on the original site plan are loading spaces and should not have been included in the total number of available parking spaces. Eighty-two parking spaces are available and a variance of 13 parking spaces is required.
4. The Board grants the variance to the minimum required number of parking spaces for the following reasons:
 - i. The Appellant raised concerns about the parking deficiency and felt that it would create parking issues on their developments nearby. They provided anecdotal evidence that their own developments have more parking spaces than required by the *Edmonton Zoning Bylaw* but, they still experience parking issues. However, the evidence submitted is of limited use as it is difficult to compare the Appellants' developments to the proposed development without more evidence about the type of businesses occupying the Appellants' buildings. The businesses in the Appellants' buildings may have higher intensity parking requirements than are anticipated for the proposed development.
 - ii. The Appellants are concerned that the assumed Uses may be different from the actual Uses in the proposed development and require higher intensity parking. However, the Board notes that the Respondent has the benefit of a parking study prepared by a professional engineer and finds that the assumptions made with regard to the mix of Uses in the building are reasonable.
 - iii. The Board accepts the evidence submitted that the impact of a 13 parking space variance will be offset by a number of factors including:
 - a. The shared use pathway on 91 Street will make walking and biking trips to the development more convenient.
 - b. The transit routes on 91 Street, which are connected to the Century Park Light Rail Transit (LRT) Station, will facilitate non-vehicular access to the development.
 - c. There is no direct vehicular access from the subject Site to adjacent properties, lessening the probability that people wanting to visit the development will park on adjacent lots.

- d. The parking requirements for the proposed development may decrease if warehouse tenants lease more than one unit.
 - e. Nearby residential and commercial developments are within easy walking distance of the development.
 - f. The parking calculation of 95 parking spaces by the development officer is conservative. The Board accepts the evidence in the Respondent's parking study that on average the parking demand observed from similar Uses is lower than the Zoning Bylaw parking requirements.
5. Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land

Important Information for Applicant/Appellant

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

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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

CC:

***Edmonton Subdivision and
Development Appeal Board***

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SDAB-S-15-006

Application No. 165755357-001

An appeal by Modern Concept Homes / Hagen Surveys (1982) Ltd. to obtain separate titles by bare land condominium to each half of two semi-detached single family dwellings with attached double garages, on Plan 2090AH Blk 46 Lot 34, located at 12720 - 127 Avenue NW, was **TABLED TO July 22 or 23, 2015**.