



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 27, 2018
Project Number: 273522828-001
File Number: SDAB-D-18-041

Notice of Decision

- [1] On March 15, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on February 15, 2018. The appeal concerned the decision of the Development Authority, issued on February 9, 2018, to refuse the following development:

To change the Use from a Single Detached House to a Religious Assembly (Minor) (maximum 60 people)

- [2] The subject property is on Plan ND Blk 18 Lot 2, located at 10542 - 96 Street NW, within the RA8 Medium Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Boyle Street / McCauley Area Redevelopment Plan apply 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 refused Development Permit;
 - The Development Officer’s written submissions; and
 - Numerous letters of support.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Two additional letters of support
 - Exhibit B – The Appellant’s speaking notes
 - Exhibit C – Google map
 - Exhibit D – Aerial map

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. A. Wierenga, Chair of the Mission Foundation and Mr. R. Elzen, an affected party:*

- [8] Mr. Wierenga submitted two additional letters of support, marked Exhibit A, and his written submission, marked Exhibit B.
- [9] Dansons Inc. purchased this site and several other properties in this area. The company has made significant investments in inner city ministries including the Salvation Army Van Ministry and the Mustard Seed Church to purchase properties in the inner city.
- [10] They decided to invest in the proposed Mission Hall because the focus will be on spiritual care and repair that is desperately needed by so many individuals who make their way to this area of the city.
- [11] The proposed development is not about providing recreational opportunities, but rather to challenge individuals to look at themselves and their deepest inner needs and encourage them to make decisions that will put them on the road to life instead of self-destruction. Immediate intervention has its place, but their goal is to accomplish a more permanent change.
- [12] This type of service is desperately needed in the inner city and there is a growing group of individuals willing to volunteer their time to come along side and help these individuals by telling them how much God loves them.
- [13] Mr. Wierenga and Mr. Elzen provided the following information in response to questions from the Board:
- a) The company has been involved in the purchase of the property and the formation of the Mission Foundation. They were not aware of the development regulations when this property was purchased. Development & Zoning Services advised them to apply for a Development Permit to change the use from Single Detached Housing to a Religious Assembly.
 - b) The property has been used as a bakery in the past and is currently being taxed as a commercial property.
 - c) The lot located immediately south of the subject site is currently vacant, but information regarding the zoning could not be provided.

- d) The immediately adjacent site to the north has also been purchased by Dansons Inc. and is zoned for single family housing. However, it is being used and taxed as a rooming house. The Salvation Army is currently using the Apartment House located two lots north of the subject site as transition housing for people in recovery.
- e) The President of the Mission Foundation discussed the proposed development with property owners within the 60 metre notification radius, but he is currently out of the country. The owner of the autobody shop located across the lane to the west supports the proposed development.
- f) Dansons Inc. is owned by a philanthropist who purchased this property and several other properties in the area, including the immediately adjacent lot to the north.
- g) It is their intent to open the Mission Hall between 5:00 p.m. and 9:00 p.m. seven days per week. Volunteer ministers will preach the Gospel and provide fellowship for anyone who wants to attend. Their goal is to develop relationships that will allow individuals to make better decisions about their life and ultimately transition out of the inner city. Food obtained from the Food Bank will be distributed to anyone in need.
- h) The structure currently on the site has the appearance of a commercial building even though the proposed change in use is from Single Detached Housing to a Religious Assembly. All parties agreed to reference a Google Map, marked Exhibit C, to provide context for the subject site and the surrounding properties. Their long term plan is to use the rooming house on the immediately adjacent lot to the north to provide temporary housing for individuals identified through the proposed Mission Hall as willing to welcome the Word and make permanent life changes.
- i) The decision was made to provide access from the rear of the building in an attempt to mitigate problems experienced by other agencies in the area regarding users loitering on the front street and to accommodate shopping carts that they anticipate users will bring to the property.
- j) Mr. Wierenga completed the Development Permit application and the information included on the application is accurate. The main floor space will be used by volunteer ministers to preach the gospel and allow fellowship. The small basement is for mechanical purposes only; it will not be used for services.
- k) The proposed development will be a Word and Deed religious project. Word and Deed means following up the Word of God with deeds and compassion to develop relationships with troubled individuals. Many of their volunteers come from this type of background and want to give back. This facility creates a space to provide the service.

- l) Cooking facilities are not proposed. Coffee and snacks will be provided and food from the Food Bank will be distributed as required. Providing food is ancillary, it is not the focus of the Mission Hall. The focus is to bring the Word and save individuals.
- m) Preaching and sharing the Gospel will occur every evening and the presentations may incorporate audio visual presentations. Medical services will not be provided on site, but referrals may be provided as required. There will not be any sleeping space provided on site. The number of volunteers on site at any one time will vary.
- n) Mr. Elzen became involved following a discussion with the President of the House of Refuge Mission Foundation after their building was destroyed by fire. He owns numerous properties in the area and began looking at properties that would help them replace their building. The owner of this site offered to sell his property to him and Dansons Inc. then agreed to finance the project.
- o) Mr. Elzen rents nearby living space to many troubled tenants who need to find a relationship with God. He is a member of the Board of the Mission Foundation and believes that many troubled individuals will be helped by this service.
- p) The goal of the Mission Foundation is to establish contact with individuals, talk with them and teach them about the love of God. The Mission will help find them employment if they are willing to change their lives and move them into temporary housing in the rooming house located on the immediately adjacent lot to the north. The ultimate goal is to move them out of the inner city into housing provided by bible based Churches in other areas of the city.
- q) The proposed facility will provide a place for extremely challenged individuals who are no longer welcome in other churches and agencies in the area. This will be a safe place to attend a service and have coffee. Hopefully hearing the word of God will bring them to faith. This location is perfect because it is located approximately 200 feet from the Bissell Centre.
- r) The owners of the bakery that operated from this site in the past lived in the building and did not change the use because they did not want to pay commercial taxes. After the property was purchased, the building was gutted and a new roof was installed.
- s) The door on the north elevation of the floor plan provides a fire escape and there is a mechanical room in the cellar.
- t) The recommended conditions identified by the Development Officer are acceptable.
- u) It was their opinion that the proposed use of a Religious Assembly for a maximum of 60 occupants is well suited to the site and will add to the amenities of the area. An aerial map, marked Exhibit D, was used to illustrate the existing uses of properties in close proximity to the subject site. The owner of the autobody shop located across

- the rear lane and west of the subject site supports the proposed development. The Bissell Centre is located across the avenue, south of the site. They are aware of and support the development. The owner of the immediately adjacent property to the south has offered to sell his lot to the Mission. The McCauley Community League supports the proposed development.
- v) The focus of the Mustard Seed Church and the Hope Mission has changed from the teachings of Jesus Christ to the provision of many services including food and lodging. The proposed development is different – its focus will be on the first step of bringing individuals to the Word.
 - w) They are not opposed to the imposition of a condition restricting the hours of operation to 9:00 a.m. to 9:00 p.m., seven days per week as they might add daytime bible study classes.
 - x) Part of their volunteer base includes the provision of security that will ensure that the maximum number of occupants is enforced. In the interest of security, they support a 9:00 p.m. closing time and there are no plans to allow overnight stays.
 - y) The detached garage will be used to provide additional storage.
 - z) The proposed development does not fit the use class definition for Community Recreation Services because recreation is not their primary focus. This is not a place to gather for meals or for recreation through games and activities. The primary focus of the proposed use is the promotion of Christian principles through faith based preaching and teaching.

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

[14] Mr. Welch provided a written submission, but did not attend the hearing.

Decision

[15] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. No more than 60 individuals shall be allowed on Site at any given time;
2. The hours of operation as a Religious Assembly shall be from 9:00 a.m. to 9:00 p.m., seven days per week;
3. No person is allowed to stay on the premises overnight;
4. The building is not be used as a temporary or permanent residence by any person;

5. Exterior lighting shall be developed to provide a safe, lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer;
6. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the *Edmonton Zoning Bylaw*).

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

1. The minimum required Site Area of 930 square metres pursuant to Section 71(1) is varied to allow a deficiency of 622.11 square metres, thereby decreasing the minimum required to 307.89 square metres.
2. The minimum required Frontage of 30.0 metres pursuant to Section 71(1) is varied to allow a deficiency of 19.94 metres, thereby decreasing the minimum required to 10.06 metres.

Reasons for Decision

[17] The Development Permit application under appeal proposes to change the Use of an existing building approved as a Single Detached House to a Religious Assembly (Minor), with a capacity of 60 persons. A Religious Assembly is a Discretionary Use in the RA8 Medium Rise Apartment Zone.

[18] The Development Authority refused the application based on a determination that the proposed Use more closely fits the definition of a Community Recreation Service which is neither a Permitted nor a Discretionary Use in this zone.

[19] Section 7.8(14) of the *Edmonton Zoning Bylaw* defines a Religious Assembly as:

Development used for worship and related religious, philanthropic or social activities and includes Accessory rectories, manses, meeting rooms, food preparation and service facilities, classrooms, dormitories and other buildings. Typical uses include churches, chapels, mosques, temples, synagogues, parish halls, convents and monasteries. This Use does not include Private Education Services, Public Education Services, and Commercial Schools, even as Accessory Uses.

[20] Section 7.8(1) of the *Edmonton Zoning Bylaw* defines a Community Recreation Service as:

Development used for recreational, social arts, or multi-purpose Use in a building without fixed seats and an occupancy capacity of fewer than 500 persons, primarily intended for local community purposes. Typical Uses include

community halls, community centres, and community league buildings operated by a local residents' group.

- [21] First, the Board considered the proper Use Class for the proposed development.
- [22] As noted in his written submission, the Development Officer decided that the proposed development was better defined as a Community Recreation Service based on the written information provided by the Appellant in the Development Permit application form at Section D.12 which asks applicants to detail the "proposed business activities... within the building." The Appellant wrote, "This building will be used for by the House of Refuge Foundation to minister to the needs of the people in the area by offering a cup of coffee and friendship with the objective of helping people make better choices for their welfare".
- [23] The Board agrees that this written description, considered in isolation, gives no real indication that religious worship services would be taking place on the property.
- [24] However, it became evident during the hearing, based on the verbal testimony of the Appellant and another affected party that the description included on the Development Permit application was incomplete. It failed to include the central purpose of the proposed Use. As explained in detail by the Appellant and supported in many the letters of support from future participants, the central purpose of this development is to preach the gospel and bring individuals to faith through hearing the word of God. This will be achieved through formal prayer services, reading the Bible aloud, group discussions and religious presentations as well as individual conversations to create connections and gain trust.
- [25] The provision of food is incidental to this central Use based on the submitted plans and on the Appellant's evidence that food will not be formally prepared on Site. Further, the Appellant was clear that neither physical nor mental health services will be provided on Site.
- [26] The Board concludes that the proposed development fits squarely within the Use Class definition of a Religious Assembly.
- [27] Second, the Board considered whether a Religious Assembly is an appropriate Discretionary Use at this location.
- [28] The Board finds that the proposed development is appropriate as it is reasonably compatible with surrounding development and there are no valid planning reasons to deny the Use for the following reasons:
- a) The proposed development faces the parking lot of the post office immediately across 96 Street to the east. There is a commercial development behind the subject Site immediately across the lane to the west and that owner supports the development.

- b) The property owner of the abutting vacant lot to the South, who is also one of the most affected neighbours, did not raise any concerns regarding the compatibility of Religious Assembly Use.
- c) The subject Site is located within close proximity to several other Religious Assemblies and religious-based services. According to the Appellants, the proposed Discretionary Use will complement those nearby religious developments.
- d) The Board has imposed conditions 1 through 4 on the proposed Discretionary Use to limit potential incompatibility or adverse impacts from activities associated with the proposed change in Use. The Appellant did not object to the additional conditions imposed by the Board.

[29] Finally, the Board considered the three potential variances identified by the Development Officer in his written report. The Board grants the variances to section 71 of the *Bylaw* required by the change in Use to a Religious Assembly for the following reasons:

- a) The Appellant mentioned that some maintenance related repairs are being made to the roof and the application references some exterior and interior alterations. However, the Board notes that scope of this Development Permit application is limited to “Change the Use from a Single Detached House to a Religious Assembly.”
- b) The Development Officer gave no indication that the existing Building was a non-conforming Building and the Board received no evidence of existing legal non-conformity, if any, related to the physical Building. In any event, according to the submitted plans and the Development Officer’s report, the change in Use does not appear to involve a change the current physical footprint. The Board received no evidence from the Appellant that the proposed development includes a material enlargement, rebuilding or structural alterations to the Building.
- c) The Building has been in existence at its current location, as is and as proposed for many years with no known complaints related to the required variances in section 71 concerning Site Area or Site Frontage associated with the proposed change in Use.
- d) Numerous letters in support of the proposed Use were received and no one objected to the proposed change in Use of the current principle building, nor to the Use of the existing Accessory building (detached garage) for storage.
- e) The Appellant also owns the immediately adjacent lot to the north and fully supports the proposed development. The immediately adjacent lot to the south is currently vacant, but that property owner is aware of the proposed development and did not appear or provide any submissions in opposition. The owner of the property located across the lane to the west fully supports the development as do the operators of the Bissell Centre located a few lots south of the subject Site.
- f) The McCauley Community League also supports the proposed change in Use.

- g) The Development Officer indicated that the variances are large and that there are other fully compliant lots available for this Use in the City as potential reasons for refusal. The Board disagrees with these reasons. The Board determines variances based on impacts to surrounding properties and neighbourhood amenities per section 687(3)(d) of the *Municipal Government Act* rather than upon the sheer magnitude of a variance or upon the availability of other fully compliant Sites.
- h) In this case, no negative impacts associated with the variances are alleged. In deed, the Board received evidence to the contrary at the hearing. The Board accepts the evidence provided by the owner of several properties in this area who attended the hearing that the proposed development is desperately needed and will add to, rather than detract from, the amenities of this neighbourhood. This position was reinforced in the multiple letters of support.

[30] Based on the above, it is the opinion of the Board, that the proposed development, as approved, 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

Board members in attendance: Mr. C. Buyze, Mr. B. Gibson, Ms. M. McCallum, Mr. L. Pratt

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.