

Edmonton Subdivision and Development Appeal Board

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DATE: April 2, 2015
PROJECT NO.: 162237902-001
FILE NO.: SDAB-D-15-040

NOTICE OF DECISION

This appeal dated February 3, 2015, from the decision of the Development Authority for permission to:

Change a portion of an existing Religious Assembly Use to a Child Care Service (out-of-school care - 3 employees, 31 children)

on Plan 7722037 Blk 12 Lot 46, located at 6104 - 172 Street NW was heard by the Subdivision and Development Appeal Board at its hearing held on February 26, 2015 and March 18, 2015. The decision of the Board was as follows:

February 26, 2015 Hearing:

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 Presiding Officer indicated that the Board would hear a postponement request as a preliminary matter.

The Board heard from Ms. Athwal, legal counsel for the Appellant, the Lessard Community League, who made the following points:

1. She indicated that she was recently retained as by the Appellant, the Lessard Community League, and met with them for the first time on February 25, 2015.
2. She is requesting a postponement of the hearing for three weeks to prepare documents for the hearing.

The Board then heard from Mr. Hashen on behalf of the Respondent, Play Care Daycare Ltd., who made the following points:

1. He is prepared to proceed with the appeal hearing today.

2. He is opposed to the postponement request as this would have an economic impact on his business.

DECISION:

“that the appeal be TABLED TO MARCH 18 or 19, 2015.”

REASONS FOR DECISION:

The Board finds the following:

1. The Appellant retained legal counsel one day before the appeal hearing and legal counsel is not prepared to proceed with the merits of the appeal.
2. The Board acknowledges that the Respondent is ready to proceed with the merits of the appeal.
3. The Board acknowledges that postponing the appeal hearing may have an economic impact on the Respondent; however, it is compelled to grant this tabling in the interests of fairness to both parties and specifically to ensure counsel has had the opportunity to prepare for the appeal.
4. This is the first postponement request.
5. The Board tables the appeal hearing for three weeks to allow both parties a fair hearing.

March 18, 2015 Hearing:**MOTION:**

“that SDAB-D-15-040 be raised from the table.”

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 change a portion of an existing Religious Assembly Use to a Child Care Service (out-of-school care – 3 employees, 31 children), subject to conditions, located at 6104 – 172 Street NW. The subject site is zoned DC2.697 Site Specific Development Control Provision. The approved development permit application was appealed by the Lessard Community League.

The Board received the following documents in advance of the hearing:

- three letters in opposition to the proposed development;
- a written submission from the Appellant's legal counsel;
- a written submission from the Respondent's legal counsel; and
- a written submission from the Development Authority.

At the outset of the appeal hearing, the Presiding Officer indicated that the Board will hear SDAB-D-15-040 and SDAB-D-15-041 together. There was no objection from all the parties in attendance to hear both appeal hearings together.

The Board heard from Ms. Athwal, legal counsel for the Appellant, the Lessard Community League, who was accompanied by Mr. Girgis, Mr. Rogerville, and Mr. Wilman, all representing the Lessard Community League.

Mr. Girgis made the following points:

1. He is the Vice President of the Lessard Community League, which represents 670 houses and condominiums with 1888 residents in the area.
2. The proposed development is located within the Lessard Mall, which is owned by the Muslim Association of Canada.
3. He made reference to photographs within TAB 4 of their submission which depicted:
 - a. the only access to the neighbourhood is via Callingwood Road;
 - b. traffic congestion in the area when people are attending services at the Mosque;
 - c. several cars that are parked illegally including large trucks that remain on the street for several days; and
 - d. the Ukrainian Orthodox Church located on the corner of 172 Street and Callingwood Road.
4. The neighbourhood has experienced several issues with regard to parking, noise, and trespassing. In his opinion, the issues started to get worse in the summer of 2010.
5. He referred to TAB 5 of their submission, which included tables and graphs depicting the attendance of the mosque from August 2010 to June 2013. The attendance has increased over the aforementioned period and is often over the maximum allowable of 400.

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

1. In response to the time of day the photographs within TAB 4 of the submissions were taken, he stated that the photographs were taken between noon and 3:00 p.m. on Fridays and on special occasions.

Mr. Rogerville made the following points:

1. He is the President of the Lessard Community League.
2. Traffic and noise has been an issue for approximately five years.

3. The Community League has regularly worked with the City of Edmonton's Bylaw Enforcement Team ("Bylaw Enforcement") to document the overuse of the facility. However, the Bylaw Enforcement informed the Community League to discontinue the practice of keeping track of the attendance within the mosque. Bylaw Enforcement will conduct its own attendance count instead.
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6. An EPS Officer has advised the Lessard Community League to contact Bylaw Enforcement when there are issues and in turn, the City would contact the police if necessary. However, Bylaw Enforcement could not always attend the site when they are called.
7. To his knowledge, there are 5 or 6 other daycares in the area.
8. He presented a PowerPoint presentation, marked as Exhibit 'A', which includes a video depicting a car traveling south on 172 Street; and parked vehicles on both sides of the road. He stated the intersection at Callingwood Road and 172 Street is busy.
9. The Ukrainian Orthodox Church, located east of the subject development and across 172 Street, has a large amount of surface parking on their site; however when the surface parking is full the area becomes congested.
10. The Ukrainian Orthodox Church wanted to build another social hall on the green space located on the south end of their property. The Lessard Community League was opposed to the proposed development due to the lack of parking and the proposed development was not approved.

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

1. He confirmed that there are two existing daycares in the subject building.
2. In his opinion, the Development Authority did not follow the direction of City Council because the Development Authority did not have the information that was presented to the Board when the proposed development was approved.

Mr. Wilman, a member of the Lessard Community League, made the following points:

1. He has been involved with the property for the last five years.
2. He referred to the parking calculation within the Development Authority's submission and believes the Development Authority has made an error for the following reasons:
 - a. With regard to the Elite School of Music business, he stated that the Development Authority calculated that 0.5 parking stall is required. In his opinion, this should be rounded to one parking space;
 - b. In his opinion, when the Muslim Association of Canada received a permit for 400 people, this was based on an outdated Bylaw which assumed there would be four persons per vehicle, which is not the requirement of the current Bylaw;

- c. With regard to the Chutney Restaurant, he stated that the Development Authority calculated no parking spaces even though there should be eight parking spaces but later varied to zero by a previous SDAB decision;
 - d. The predecessor of Chutney Restaurant did not comply with the conditions imposed at the time of issuance and the new owner was not aware of those conditions;
 - e. With regard to the MacPharmacy (a General Retail Stores Use), the Development Authority indicated that the development permit application is pending even though it has been operating for at least 5 months;
 - f. The Development Authority should have taken into account the parking requirements for the MacPharmacy when approving the proposed development.
3. In the winter months snow is piled on the parking lot, which takes up parking spaces.
 4. There is not adequate parking on the Site.

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

1. He conceded that the mosque is utilizing more parking spaces on the subject site than the amount allocated as per their development permit approval, being 100 parking spaces. In his opinion, there should be a minimum of 200 parking spaces dedicated for the mosque.
2. In his opinion, approximately 13 to 15 additional parking spaces are required for the proposed development.

Ms. Athwal made the following points:

1. She referred to TAB 2 of their submission which detailed the special land use provision for child care services within Section 80 of the *Edmonton Zoning Bylaw*. Section 80.9 states that all development permit applications for childcare service shall include a site plan that shows the required on-site parking and drop-off facilities.
2. The site plans show the same five drop-off parking spaces for both of the proposed developments and are incorrect as they do not show the required number of parking spaces for the proposed developments.
3. The parking calculations for the proposed developments are outlined the Development Authority's submission.
4. She conceded that 18 is the correct number of required parking spaces (i.e. 8 employee parking spaces and 10 drop-off spaces), but the drop-off spaces are not shown on the Site Plan as required in the *Edmonton Zoning Bylaw*.
5. There are 166 on-site parking spaces.
6. A restaurant that should have 8 parking spaces was approved with zero parking spaces as this requirement was previously waived by the Board.
7. With regard to the Ahmad Fayad Professional Corp. (a Health Services Use), she stated that this business should have 9.7 parking spaces and it was approved with 6.7 parking spaces.
8. The floor area of the mosque will be reduced by 2667 square feet due to the proposed developments.
9. The number of people attending the subject site will be the same, but with less space.

10. There will be 85 children and 13 employees for a total of 98 new people attending the subject site if the proposed development is approved. This does not include parents dropping children off at the daycare.
11. With regard to TAB 1 of Respondent's submission, she stated that the photographs were taken after 8:50 a.m. and not during rush hour when children are dropped off.
12. With regard to *Investors Group Trust Co. Ltd. v. Calgary*, 2005 ABCA 34, contained at TAB 2 of the Respondent's submission, she stated that the case is distinguishable as there were no variances were required in that case. In the current situation, the *Edmonton Zoning Bylaw* has not been complied with and the parking calculations are not correct.
13. In her opinion, following the direction of City Council means correctly applying the parking regulations in the *Edmonton Zoning Bylaw*.

In response to questions by the Board, Ms. Athwal provided the following information:

1. She agreed that the Development Authority was correct not to include parking spaces in his calculations that were previously waived.
2. However, the parking at the MacPharmacy (a General Retail Stores Use) and the Elite School of Music should be factored in the parking calculations.

The Board then heard from Mr. Kowal, representing the Development Authority, the Sustainable Development Department, who answered questions from the Board. Mr. Kowal provided the following information:

1. He has the ability to request a parking analysis for the review of the subject application, but stated that a parking analysis is not required unless it is a larger project and the proposed development does not meet this requirement.
2. With regard to parking, the approved site plan shows five drop-off parking spaces dedicated to the proposed developments but showed 10 parking spaces in a previous site plan. The discrepancy was an oversight.
3. He agreed that he should have requested a breakdown for drop-off and pick-up parking spaces.
4. He calculated that a total of 165.4 parking spaces are required for all the uses approved on the site and 166 parking spaces are provided on the site.
5. The parking calculation for the MacPharmacy (a General Retail Stores Use) is pending because a development permit has not yet been approved.
6. He confirmed that the parking calculations are totaled for all the Uses on the site and the sum is rounded up to the next whole number.
7. In response to whether he was aware of the lack of on-site parking and the traffic congestion in the area, he stated that he was not aware of these issues when the proposed development was approved.
8. In response to whether he would have reviewed the development permit application differently if he was aware of the parking congestion, he stated he would have requested a parking analysis.
9. He confirmed that the concerns of the neighbourhood are related to the use of the mosque and not the proposed daycare.

The Board then heard from Mr. Sawani, legal counsel for the Respondent, Play Care Daycare Ltd., who was accompanied by Mr. Almasri, representing Play Care Daycare Ltd. Mr. Sawani made the following points:

1. He stated that the letter in TAB 1 of his submission should read 10 drop-off spaces and not five parking spaces. The total includes 6 drop-off spaces for the daycare and 4 drop-off spaces for the out-of-school care.
2. A temporary waste container will be removed from one of the parking spaces on the subject site.
3. The Appellant's concerns are related to traffic, noise, and parking. In his opinion, these concerns are not in the purview of the Board.
4. The parking issue and bylaw enforcement issues are with the existing uses on the subject site and are not related to the proposed daycare.
5. There is one other daycare on the subject site that has a waiting list for children, which shows that there is a need for the proposed development.
6. The Respondent can enforce parking violations for the proposed development as the subject site is a private property and cars can be towed away if needed.
7. It is in the best interest of the daycare to be located at a proper location.
8. The Development Authority visited the subject site and has all the required information to approve the proposed development.
9. The photographs in TAB 1 the Respondent's submission were taken at approximately 9:00 a.m.; however, this was an indication of parking in the area.
10. He confirmed that the mosque could have services during the time that the daycare is open.
11. In his opinion, the parking calculation by the Development Authority is correct.
12. The parking calculation for the Elite School of Music showing 0.5 spaces was intended for the entire day and the calculation means that one parking space will be used fifty percent of the time over the course of the day.
13. In his opinion, the Development Authority should not second-guess a variance granted by the SDAB unless there is a challenge to the SDAB Decision.
14. The MacPharmacy (a General Retail Stores Use) is operating without a permit and may have other issues.
15. In his opinion, the proposed development should not be affected by another business that is in contravention of the *Edmonton Zoning Bylaw*.

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

1. The Respondent has the exclusive use of the parking spaces designated to the proposed development.
2. The hours of operation for the daycare will be from 6:00 a.m. to 9:00 a.m. for drop-off and 4:00 p.m. to 6:00 p.m. for pick-up.
3. He confirmed that the proposed development will reduce the square footage of the mosque.

In rebuttal, Ms. Athwal made the following points:

1. With regard to the power of the Development Authority, she referred the Development Authority's submission, which states, "the Development Officer is appointed the Development Authority for the City of Edmonton and is authorized to exercise development powers and duties on behalf of the city in accordance with the Land Use Bylaw and the Act."
2. The regulations in Section DC2.697.4 and the parking requirements of the *Edmonton Zoning Bylaw* are the only issues the Development Authority can address to determine compliance.
3. The Development Authority is of the opinion that the proposed use complies with the Bylaw as it is a listed use and the floor area does not exceed the maximum proposed use as it complies with the regulations in Section 310.4 and 310.5 as well as the parking requirements of the *Edmonton Zoning Bylaw* and the proposed use is in compliance with the regulations in Section 80 of the *Edmonton Zoning Bylaw*.
4. However, the Development Authority was in error as the site plans for both developments show only 5 drop-off parking spaces and not the 10 parking spaces that are required. Therefore, the parking calculations are in error.
5. In her opinion, a condition should be imposed that a parking analysis should be conducted before the proposed development can be approved and this is something that the Development Authority acknowledged.
6. The mosque operates every day with services occurring five times a day. The peak times of the mosque are on Fridays at 2:00 p.m., which adds to the parking issues in the area.
7. She confirmed that there are two other daycares on the subject site.

In response to questions by the Board, Ms. Athwal provided the following information:

1. With regard to the non-compliance with the *Edmonton Zoning Bylaw*, she stated the requirements of Section 80.6 and 80.9 have not been met.
2. She reiterated that the parking calculation was not done correctly and the site plan does not show the required drop-off parking spaces.

DECISION:

that the appeal be DENIED and the decision of Approval by the Development Authority CONFIRMED, subject to the following additional condition:

1. The Appellant shall provide a revised Site Plan, showing the location of 4 on-site drop-off parking spaces for the out-of-school care and 6 on-site drop-off parking spaces for the daycare, located within 60 metres of the main entrance of the Child Care Services facility, on or before April 16, 2015, to the satisfaction of the Board.

Conditions

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a DP Notification Fee of \$100.00.
2. The maximum Floor Area of any individual business premises for a Permitted Use shall not exceed 275 square metres.
3. Exterior lighting of the facility shall provide for a well lit environment; Section 80.7.
4. Four on-site drop-off parking stalls shall be provided; Section 80.6.
5. The outdoor play space shall be located at ground level; Section 80.8(b).
6. The outdoor play space shall be securely enclosed on all sides; Section 80.8(c).
7. The outdoor play space shall have secure perimeter fencing that is at least 1.83 m in height; Section 80.8(b)(i).
8. All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.

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.

Notes:

- Signs require separate Development Applications.

- 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.

- 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.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a listed Use in the DC2.697 Site Specific Development Control Provision.

2. The Board acknowledges the concerns raised by the Appellant regarding parking and traffic on the entire Site; however, the Board finds that these conditions relate to other Uses at the subject site and will not be exacerbated by the proposed development due to its limited time periods when children are dropped-off and picked-up.
3. Although the approved Site Plan did not show the required number of on-site drop-off spaces, the Board does not consider this a failure of the Development Authority to follow the directions of council for the following reasons:
 - a. The parking calculations provided by the Development Officer did identify the correct number of on-site drop-off spaces, as acknowledged by the Appellant.
 - b. The conditions imposed by the Development Authority do require the provision of the correct number of on-site drop-off parking spaces.
 - c. The Board accepts the Development Officer's evidence that this was an oversight.
 - d. The imposition of a condition for a revised Site Plan will address this oversight.
4. Based on the evidence submitted and with the additional condition, the Board finds that the propose development fully complies with all of the requirements of DC2.697 Site Specific Development Control Provision and the *Edmonton Zoning Bylaw*, and that the directions of City Council have been met.

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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Mr. N. Somerville, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

Edmonton Subdivision and Development Appeal Board

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DATE: April 2, 2015
PROJECT NO.: 162237902-002
FILE NO.: SDAB-D-15-041

NOTICE OF DECISION

This appeal dated February 3, 2015, from the decision of the Development Authority for permission to:

Change a portion of an existing Religious Assembly Use to a Childcare Service (daycare - 10 employees, 54 children) and construct interior / exterior alterations

on Plan 7722037 Blk 12 Lot 46, located at 6104 - 172 Street NW was heard by the Subdivision and Development Appeal Board at its hearing held on February 26, 2015 and March 18, 2015. The decision of the Board was as follows:

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1. He is prepared to proceed with the appeal hearing today.

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DECISION:

“that the appeal be TABLED TO MARCH 18 or 19, 2015.”

REASONS FOR DECISION:

The Board finds the following:

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2. The Board acknowledges that the Respondent is ready to proceed with the merits of the appeal.
3. The Board acknowledges that postponing the appeal hearing may have an economic impact on the Respondent; however, it is compelled to grant this tabling in the interests of fairness to both parties and specifically to ensure counsel has had the opportunity to prepare for the appeal.
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5. There are 166 on-site parking spaces.
6. A restaurant that should have 8 parking spaces was approved with zero parking spaces as this requirement was previously waived by the Board.
7. With regard to the Ahmad Fayad Professional Corp. (a Health Services Use), she stated that this business should have 9.7 parking spaces and it was approved with 6.7 parking spaces.
8. The floor area of the mosque will be reduced by 2667 square feet due to the proposed developments.
9. The number of people attending the subject site will be the same, but with less space.

10. There will be 85 children and 13 employees for a total of 98 new people attending the subject site if the proposed development is approved. This does not include parents dropping children off at the daycare.
11. With regard to TAB 1 of Respondent's submission, she stated that the photographs were taken after 8:50 a.m. and not during rush hour when children are dropped off.
12. With regard to *Investors Group Trust Co. Ltd. v. Calgary*, 2005 ABCA 34, contained at TAB 2 of the Respondent's submission, she stated that the case is distinguishable as there were no variances were required in that case. In the current situation, the *Edmonton Zoning Bylaw* has not been complied with and the parking calculations are not correct.
13. In her opinion, following the direction of City Council means correctly applying the parking regulations in the *Edmonton Zoning Bylaw*.

In response to questions by the Board, Ms. Athwal provided the following information:

1. She agreed that the Development Authority was correct not to include parking spaces in his calculations that were previously waived.
2. However, the parking at the MacPharmacy (a General Retail Stores Use) and the Elite School of Music should be factored in the parking calculations.

The Board then heard from Mr. Kowal, representing the Development Authority, the Sustainable Development Department, who answered questions from the Board. Mr. Kowal provided the following information:

1. He has the ability to request a parking analysis for the review of the subject application, but stated that a parking analysis is not required unless it is a larger project and the proposed development does not meet this requirement.
2. With regard to parking, the approved site plan shows five drop-off parking spaces dedicated to the proposed developments but showed 10 parking spaces in a previous site plan. The discrepancy was an oversight.
3. He agreed that he should have requested a breakdown for drop-off and pick-up parking spaces.
4. He calculated that a total of 165.4 parking spaces are required for all the uses approved on the site and 166 parking spaces are provided on the site.
5. The parking calculation for the MacPharmacy (a General Retail Stores Use) is pending because a development permit has not yet been approved.
6. He confirmed that the parking calculations are totaled for all the Uses on the site and the sum is rounded up to the next whole number.
7. In response to whether he was aware of the lack of on-site parking and the traffic congestion in the area, he stated that he was not aware of these issues when the proposed development was approved.
8. In response to whether he would have reviewed the development permit application differently if he was aware of the parking congestion, he stated he would have requested a parking analysis.
9. He confirmed that the concerns of the neighbourhood are related to the use of the mosque and not the proposed daycare.

The Board then heard from Mr. Sawani, legal counsel for the Respondent, Play Care Daycare Ltd., who was accompanied by Mr. Almasri, representing Play Care Daycare Ltd. Mr. Sawani made the following points:

1. He stated that the letter in TAB 1 of his submission should read 10 drop-off spaces and not five parking spaces. The total includes 6 drop-off spaces for the daycare and 4 drop-off spaces for the out-of-school care.
2. A temporary waste container will be removed from one of the parking spaces on the subject site.
3. The Appellant's concerns are related to traffic, noise, and parking. In his opinion, these concerns are not in the purview of the Board.
4. The parking issue and bylaw enforcement issues are with the existing uses on the subject site and are not related to the proposed daycare.
5. There is one other daycare on the subject site that has a waiting list for children, which shows that there is a need for the proposed development.
6. The Respondent can enforce parking violations for the proposed development as the subject site is a private property and cars can be towed away if needed.
7. It is in the best interest of the daycare to be located at a proper location.
8. The Development Authority visited the subject site and has all the required information to approve the proposed development.
9. The photographs in TAB 1 the Respondent's submission were taken at approximately 9:00 a.m.; however, this was an indication of parking in the area.
10. He confirmed that the mosque could have services during the time that the daycare is open.
11. In his opinion, the parking calculation by the Development Authority is correct.
12. The parking calculation for the Elite School of Music showing 0.5 spaces was intended for the entire day and the calculation means that one parking space will be used fifty percent of the time over the course of the day.
13. In his opinion, the Development Authority should not second-guess a variance granted by the SDAB unless there is a challenge to the SDAB Decision.
14. The MacPharmacy (a General Retail Stores Use) is operating without a permit and may have other issues.
15. In his opinion, the proposed development should not be affected by another business that is in contravention of the *Edmonton Zoning Bylaw*.

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

1. The Respondent has the exclusive use of the parking spaces designated to the proposed development.
2. The hours of operation for the daycare will be from 6:00 a.m. to 9:00 a.m. for drop-off and 4:00 p.m. to 6:00 p.m. for pick-up.
3. He confirmed that the proposed development will reduce the square footage of the mosque.

In rebuttal, Ms. Athwal made the following points:

1. With regard to the power of the Development Authority, she referred the Development Authority's submission, which states, "the Development Officer is appointed the Development Authority for the City of Edmonton and is authorized to exercise development powers and duties on behalf of the city in accordance with the Land Use Bylaw and the Act."
2. The regulations in Section DC2.697.4 and the parking requirements of the *Edmonton Zoning Bylaw* are the only issues the Development Authority can address to determine compliance.
3. The Development Authority is of the opinion that the proposed use complies with the Bylaw as it is a listed use and the floor area does not exceed the maximum proposed use as it complies with the regulations in Section 310.4 and 310.5 as well as the parking requirements of the *Edmonton Zoning Bylaw* and the proposed use is in compliance with the regulations in Section 80 of the *Edmonton Zoning Bylaw*.
4. However, the Development Authority was in error as the site plans for both developments show only 5 drop-off parking spaces and not the 10 parking spaces that are required. Therefore, the parking calculations are in error.
5. In her opinion, a condition should be imposed that a parking analysis should be conducted before the proposed development can be approved and this is something that the Development Authority acknowledged.
6. The mosque operates every day with services occurring five times a day. The peak times of the mosque are on Fridays at 2:00 p.m., which adds to the parking issues in the area.
7. She confirmed that there are two other daycares on the subject site.

In response to questions by the Board, Ms. Athwal provided the following information:

1. With regard to the non-compliance with the *Edmonton Zoning Bylaw*, she stated the requirements of Section 80.6 and 80.9 have not been met.
2. She reiterated that the parking calculation was not done correctly and the site plan does not show the required drop-off parking spaces.

DECISION:

that the appeal be DENIED and the decision of Approval by the Development Authority CONFIRMED, subject to the following additional condition:

1. The Appellant shall provide a revised Site Plan, showing the location of 4 on-site drop-off parking spaces for the out-of-school care and 6 on-site drop-off parking spaces for the daycare, located within 60 metres of the main entrance of the Child Care Services facility, on or before April 16, 2015, to the satisfaction of the Board.

Conditions

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a DP Notification Fee of \$100.00.
2. The maximum Floor Area of any individual business premises for a Permitted Use shall not exceed 275 square metres.
3. Exterior lighting of the facility shall provide for a well lit environment; Section 80.7.
4. Six on-site drop-off parking stalls shall be provided; Section 80.6.
5. The outdoor play space shall be located at ground level; Section 80.8(b).
6. The outdoor play space shall be securely enclosed on all sides; Section 80.8(c).
7. The outdoor play space shall have secure perimeter fencing that is at least 1.83 m in height; Section 80.8(b)(i).
8. All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.

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.

Notes:

- Signs require separate Development Applications.

- 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.

- 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.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a listed Use in the DC2.697 Site Specific Development Control Provision.
2. The Board acknowledges the concerns raised by the Appellant regarding parking and traffic on the entire Site; however, the Board finds that these conditions relate to other Uses at the subject site and will not be exacerbated by the proposed development due to its limited time periods when children are dropped-off and picked-up.
3. Although the approved Site Plans did not show the required number of on-site drop-off spaces, the Board does not consider this a failure of the Development Authority to follow the directions of council for the following reasons:
 - a. The parking calculations provided by the Development Officer did identify the correct number of on-site drop-off spaces, as acknowledged by the Appellant.
 - b. The conditions imposed by the Development Authority do require the provision of the correct number of on-site drop-off parking spaces.
 - c. The Board accepts the Development Officer's evidence that this was an oversight.
 - d. The imposition of a condition for a revised Site Plan will address this oversight.
4. Based on the evidence submitted and with the additional condition, the Board finds that the propose development fully complies with all of the requirements of DC2.697 Site Specific Development Control Provision and the *Edmonton Zoning Bylaw*, and that the directions of City Council have been met.

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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.

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.

Mr. N. Somerville, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

Edmonton Subdivision and Development Appeal Board

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DATE: April 2, 2015
PROJECT NO.: 164675786-001
FILE NO.: SDAB-D-15-054

NOTICE OF DECISION

This appeal dated February 19, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (detached Garage, 8.53m x 7.32m) and to demolish an Accessory Building (detached Garage, 6.16m x 7.37m)

on Plan 5580KS Blk 1 Lot 17, located at 15224 - 81 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 18, 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 refuse an application to construct an Accessory Building (detached Garage, 8.53 metres by 7.32 metres) and to demolish an Accessory Building (detached Garage, 6.16 metres by 7.37 metres), located at 15224 - 81 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The development permit application was refused because of a deficiency in the minimum required Setback from the North Saskatchewan River Valley and Ravine System Protection Overlay.

Prior to the hearing, the following documents were submitted to the Board:

- a written submission from the Development Authority;
- an email from the City of Edmonton Engineering Services, Transportation Services;
- a set of aerial photographs from the Appellant;
- a petition with 18 signatures from neighbouring property owners in support of the proposed development from the Appellant;
- a letter of support of the proposed development from a neighbouring property owner; and

- an on-line response in support of the proposed development from a neighbouring property owner.

The Board heard from Mr. and Mrs. Burrell, the Appellants, who made the following points:

1. They moved to the area 14 years ago because the subject site backs on to a gully.
2. The garage on the subject site burned down approximately one year ago.
3. Four weeks after the garage burned down, the insurance company removed the garage and they were not aware that a demolition permit was required.
4. They applied for a development permit to re-build the garage in November 2014.
5. They want to rebuild the same size garage with an additional roof overhang; however, the footprint will remain the same.
6. The garage placement is critical as there is a single driveway leading to the two-car garage which makes maneuvering of a vehicle to access the garage difficult.
7. The length of the garage could be reduced by one foot, but this will reduce the workbench and storage area in the garage.
8. There are 14 houses in the area that are closer to the ravine than their house.
9. There was a flood in the area years ago and 90 percent of the properties were flooded. The gully had no raw sewage in the water as a result of the flood.
10. In their opinion, there are other developments in the neighbourhood that have greater variances than what is being requested.
11. They want to receive the proper permits so everything is in place if they ever decide to sell the property.
12. They provided the Board with a neighbourhood consultation and received support from all of the neighbouring property owners on the south side of the ravine and one on the north side of the ravine. They were unable to contact the rest of their neighbours.
13. A geotechnical letter was provided by the City of Edmonton indicating that no geotechnical information is required for the proposed development.

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

1. He confirmed that the roof overhang of the garage is 8 feet wide and is attached to the west wall of the proposed garage.

The Board then heard from Mr. Xie, representing the Sustainable Development Department, who answered questions by the Board. Mr. Xie provided the following information:

1. He clarified that there is a conflict in applying both the North Saskatchewan River Valley and Ravine System Protection Overlay and the Mature Neighbourhood Overlay for the subject property.

2. He determined that when there is no stipulation in the *Edmonton Zoning Bylaw* to address conflicting policies, the policies that govern safety and protection issues will prevail. The development setback imposed by the North Saskatchewan River Valley and Ravine System Protection Overlay addresses safety and protection issues for the public and the development regulations in the Mature Neighbourhood Overlay addresses aesthetics concerns.
3. In his opinion, the requirement for containing a rear detached garage within 12.8 metres of the rear property line described in the Section 814.3(20) of the Mature Neighbourhood Overlay is to allow for amenity space in the rear yard for properties with rear lanes. Therefore, he did not consider the particular non-compliance as essential and was not part of the reason for refusal of the application.

In rebuttal, Mr. and Mrs. Burrell provided the following information:

1. They have the support of the Lynnwood Community League.

DECISION:

that the appeal be ALLOWED and the DEVELOPMENT GRANTED, subject to the following variances and conditions:

Variance

1. A deficiency of 0.31 metres is granted in the minimum required 7.5 metres Setback from the North Saskatchewan River Valley and Ravine System Protection Overlay, as stipulated in Section 811.3(1).
2. The Board waives Section 814.3(20) of the Mature Neighbourhood Overlay requiring that a rear detached Garage shall be fully contained within the rear 12.8 metres of the Site.

Conditions

1. An Accessory Building or Structure shall not exceed 4.3 metres nor one Storey in Height. (Reference Sections 6.1(49) and 50.3(2))
2. Eave projections shall not exceed 0.46 metres into required yards or Separation Spaces less than 1.2 metres. (Reference Section 44.1(b))
3. The Driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.

Notes:

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.

Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw 12800*.

Due to the roll face curb construction at this property, there are no requirements for a separate curb crossing permit under Section 1210 and 1211 of Traffic Bylaw No. 5590. Approval is given for the access under this Development Permit.

The applicant is advised to research the Land Title for this property and to be aware any restrictions in any Restrictive Covenants registered against the legal title. This approval does not imply consent for any structure that does not meet the requirements of the Restrictive Covenant.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The City of Edmonton's Geotechnical Engineering Section of Transportation Services has reviewed the proposed development and has indicated no concerns. Therefore, the Board is not concerned with the deficiency in the required minimum Setback as stipulated in the North Saskatchewan River Valley and Ravine System Protection Overlay.
3. Further, based on the evidence submitted, the ravine is shallow. The Board is satisfied that the proposed development will not cause an adverse effect on neighbouring properties.
4. Section 814.3(20) states a rear detached Garage shall be fully contained within 12.8 metres of the Site. The Board finds the subject property does not abut a rear lane and locating a rear garage within 12.8 metres of the Rear Lot Line is only typical for properties with a rear lane. Therefore, the Board waives the requirements of Section 814.3(20).
5. Based on the submitted evidence, the Board finds a rear detached garage located in close proximity to the North Saskatchewan River System is characteristic of the neighbourhood.
6. The Board notes that the proposed development has the support of 18 neighbouring property owners and the Lynnwood Community League.

7. No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
8. 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Mr. N. Somerville, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

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Christopher Rittman
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DATE: April 2, 2015
PROJECT NO.: 161891875-001
FILE NO.: SDAB-D-15-055

NOTICE OF DECISION

This appeal dated February 24, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (second front driveway 5.20 metres wide)

on Plan 6253KS Blk 12 Lot 12, located at 7502 - 149 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 18, 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Board heard from Mr. Rittman, the Appellant, who provided the following information with regard to the timing of filing the appeal:

1. He is the person who signed the registered letter containing the Development Authority's decision, which was delivered to him on February 6, 2015.

MOTION:

"that the Board does not assume jurisdiction."

REASONS FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, a Canada Post Registered Mail Delivery was delivered and signed by the Appellant on February 6, 2015 and the Appellant filed the Notice of Appeal on February 24, 2015. Pursuant to section 686(1)(a)(i) of the *MGA*, the appeal was not filed within the allowable 14 days.

Mr. N. Somerville, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC: