



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: April 14, 2016  
Project Number: 140488965-002  
File Number: SDAB-D-16-082

**Notice of Decision**

[1] On March 30, 2016, the Subdivision and Development Appeal Board considered an appeal that was filed on **February 29, 2016**. The appeal concerned the decision of the Development Authority, issued on February 2, 2016, to refuse the following development:

**To construct an Accessory Building (detached Garage, 7.31m x 4.82m),  
existing without permits**

[2] The subject property is on Plan 4160HW Blk 16 Lot 1, located at 11901 - 43 Street NW, within the RF1 Single Detached Residential Zone.

**Preliminary Matters:**

[3] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[4] Because the appeal was filed on February 29, 2016, and because the Development Authority provided a copy of a Canada Post receipt indicating that notice of the Development Authority's decision was delivered 19 days earlier on February 10, 2016, the Board first considered whether the appeal was filed within the allowable time as prescribed by section 686(1)(a) of the *Municipal Government Act*, R.S.A 2000, c. M-26:

686(1) A development appeal to a subdivision and development appeal Board is commenced by filing a notice of the appeal, containing reasons, with the Board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit [...]

[5] The Chairman drew the Appellant's attention to the Canada Post receipt. The Appellant confirmed that it was his signature on the receipt and did not dispute that notice of the refusal was received on February 10, 2016.

[6] The Chairman asked the Appellant if he had any further comments or submissions with respect to the issue of late filing. The Appellant noted that there had been an ongoing dialogue with the Development Officer for several months, during which there was discussion about the resolution of this matter. He was not aware that there was an urgency associated with filing his appeal.

[7] The Development Authority took no position with respect to the late filing issue.

### **Decision**

[8] The appeal was filed outside the allowable time as prescribed by the *Municipal Government Act* and accordingly the Board does not have jurisdiction to hear this appeal.

### **Reasons for Decision**

[9] The Appellant acknowledged his signature on the Canada Post receipt indicating that notice of the Development Authority's decision was received on February 10, 2016. The Appellant admitted that he had no reason to believe that the delivery date provided on the receipt was inaccurate. Accordingly, the Board finds that notice of the Development Authority's decision to refuse the development permit was received on February 10, 2016.

[10] The appeal was filed on February 29, 2016, which is outside the allowable 14 days period prescribed by section 686(1) of the *Municipal Government Act*. Therefore, the Board does not have jurisdiction to hear the appeal.

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

### Board Members in Attendance

Mr. M. Young; Ms. M. McCallum; Mr. L. Pratt; Ms. C. Chiasson

**Important Information for the Applicant/Appellant**

1. 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.
2. 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.*



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Date: April 14, 2016  
Project Number: 185602423-001  
File Number: SDAB-D-16-083

**Notice of Decision**

- [1] On March 30, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 6, 2016**. The appeal concerned the decision of the Development Authority, issued on February 26, 2016, to refuse the following development:

**To convert a Single Detached House to a Child Care Service (27 children)**

- [2] The subject property is on Plan 1521297 Blk 7 Lot 19, located at 2604 - 12 Street NW, within the RSL Residential Small Lot Zone. The Tamarack Neighbourhood Structure Plan and the Meadows Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing:
- A nine page submission from the Development Authority, dated March 17, 2016
  - A 15 page submission from the Appellant, received on March 10, 2016
  - A five page submission from the Appellant received on March 29, 2016

**Summary of Hearing**

- [4] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.
- i) *Position of the Appellant, Kit Leung*
- [6] Mr. Leung appeared at the hearing and presented four essential arguments in support of allowing a Child Care Service for 27 children on the subject site.

[7] The first reason Mr. Leung gave for allowing the development was that a daycare service is welcome and needed in the community. The Neighbourhood Structure Plan estimates that about 1,000 children of school ages will live in the community. There is currently no daycare facility in the neighbourhood to accommodate these children.

Mr. Leung spoke to members of 100 different households and collected 110 signatures of residents who support the development of a daycare service. He noted that he has support from 13 households within the 60 metre notification radius of the subject site.

[8] The second reason Mr. Leung gave for allowing the development was that the proposed daycare would be uniquely located next to a park with a playground. The children at the proposed daycare could walk to the adjacent public playground without crossing any streets.

[9] The third reason Mr. Leung gave was that he can meet the requirements of the zoning bylaw regulations if required to do so. If necessary, he can install bicycle racks and additional lighting. To meet parking requirements, he can rent neighbouring driveway space.

[10] The fourth reason Mr. Leung gave is that the proposed daycare will not affect the peaceful enjoyment of neighbours. There would not be noise of children playing in the backyard because they would go to the nearby park and playground. There would not be undue traffic and parking congestion because there is plenty of available parking around the park. Furthermore, it is unlikely that more than six parents would be dropping off or picking up children at any one time.

[11] In answer to questions from the Board, Mr. Leung provided the following additional information:

- With respect to the regulation that requires a loading space, Mr. Leung said that his daycare would not have any need for deliveries made by a large truck.
- Nobody will live in the subject building. It will be strictly a daycare business with no residential aspect.
- There would be four employees. The required two parking spaces can be provided in the attached garage.
- Potentially staff could be residents of the neighbourhood who do not need parking. Alternatively, there is a bus route that stops a short walk from the subject site.

*v) Position of the Development Authority*

[12] Erica Peacock of the Sustainable Development department appeared at the hearing to answer questions from the Board.

[13] The Board questioned how the reviewing Development Officer could reconcile the fact that Child Care Services is a Discretionary Use in the zone with his assertion that the proposed development “does not align with the general purpose of the zone”. Ms. Peacock suggested that it was the scale of the proposed development that conflicted with the general purpose of the zone.

The general purpose of RSL zone speaks of a residential character rather than a commercial character. If the proposed development were a smaller scale Child Care Service that was incorporated within a residential Use, it would be a better fit.

[14] One of the main concerns about a Child Care Service of this scale is the potential for noise and disturbance of the neighbours. Although Mr. Leung has suggested that he intends to use the neighbouring park and playground, there is a possibility that the business could be sold to another operator who chooses to use the backyard as a play area.

[15] The Board asked about the parking requirements. Ms. Peacock confirmed that only two parking spaces are required for staff and those can be provided in the garage. With respect to the three required drop-off spaces, these cannot be in the driveway because tandem parking is not allowed.

[16] Ms. Peacock confirmed that the Transportation Services department had no concerns with the proposed parking plan and did not object to the required variances.

[17] The Board asked about the Development Authority’s caution that only one tandem parking space on the driveway could be allowable through variance due to the corner-cutting effect of a road right-of-way. Ms. Peacock advised that the Transportation Services department had not raised any concerns in relation to this right-of-way and that there would likely be no practical day-to-day impact on using the entire driveway for tandem parking.

*vi) Rebuttal of the Appellant*

[18] In response to the suggestion that a daycare servicing 27 children is of a scale that does not align with the RSL zone, Mr. Leung noted that he is aware of another daycare in an RSL zone that was recently granted a permit for 23 children. The difference between 23 children and 27 children is not significant. In answer to questions from the Board on this point he noted that the 23 child facility is not owned by him and that he came up with the figure of 27 children for his proposed facility based on a calculation of available space.

[19] Mr. Leung referred to section 4.3.2 of the Tamarack Neighbourhood Structure Plan, specifically that the NSP “allow[s] for a variety of housing forms and options consistent with consumer preferences and in conformance with municipals and policies”. He noted that the proposed development fits this stated objective.

[20] Finally, Mr. Leung said that his proposed development should be considered on the basis of what he is currently proposing and that concerns about how a potential future owner might operate are irrelevant.

### Decision

[21] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The following variances are granted:

1. A deficiency of four Drop-Off spaces as required by Section 80.6
2. A deficiency of one loading space as required by Section 54.4, Schedule 3
3. A deficiency of five Bicycle Parking spaces as required by Section 54.3

[22] The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions:

1. Outdoor play space shall be securely enclosed on all sides. Reference Section 80(8)(d)
2. Where on-site outdoor play space is provided, pursuant to the Provincial *Child Care Licensing Regulation*, it shall comply with the following regulations: noisy, noxious or hazardous adjacent Uses such as, but not limited to, loading/unloading areas, garbage bins, large parking lots, arterial roads, passenger drop-off areas, rail lines, Light Rail Transit lines or stormwater lakes should either be avoided or their effects mitigated through landscaping, buffering, fencing, or other means. Reference Section 80(8) (a)
3. Exterior lighting for the facility shall provide for a well-lit environment. Reference 80(7)
4. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).
5. 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
6. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. Reference Section 54.1(1)(c)

**Reasons for Decision**

- [23] The first issue before the Board was whether or not the proposed Child Care Service should be allowed on the subject site. Child Care Services is a Discretionary Use in the RSL Residential Small Lot Zone. The Development Authority expressed concern that as the entirety of the subject building would be used as a daycare and there would be no residential aspect to the subject building, and found that the scale of the proposed development did not align with the general purpose of the zone. Therefore, the Development Authority did not exercise its discretion to allow the proposed development. The Board does not agree with Development Authority's view in this respect. The Board finds that, although there will be up to 27 children at the proposed daycare facility, the subject building is designed as a residential house and appears as a residential house. The fact that the building will not be used as a residential house will not affect the streetscape or change the character of the neighbourhood.
- [24] Based on evidence of a community consultation conducted by the appellant, the Board finds that there is broad community support for the proposed development. There is significant support within the 60 metre notification radius. There is also written support from the community league. There were no letters or submissions received from anyone in opposition to the proposed development and no one appeared at the hearing to oppose it.
- [25] The subject site is a corner lot with very close access to a public park and playground. The site is more suitable to Child Care Services than other lots in this RSL zone.
- [26] For the foregoing reasons, the Board will exercise its discretion to allow the proposed development.
- [27] With respect to the requested variances, these all deal with drop off and loading and parking and bicycle parking. These variances are granted for the following reasons:
- The requested parking variances were reviewed by the Transportation Services department. They did not object to the requested variances.
  - The lot is a corner lot which increases the amount of street parking that would be available for the purposes of loading and drop off. In addition the evidence from the appellant is that there is not a large amount of pressure on on-street parking.
  - There is evidence of significant neighbourhood support.
  - The Board notes that the driveway to the subject site extends through a significant boulevard between the subject site and 12 street NW, meaning that for practical purposes there will be drop off capacity on the portion of the driveway which contains municipally owned lands.



- With respect to bicycle parking, the Board finds that as this development involves individuals dropping their children off at a daycare, the need for bicycle parking will be very minimal.

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. M. Young; Ms. M. McCallum; Mr. L. Pratt; Ms. C. Chiasson

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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.

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**SDAB-D-16-501**

Application No.: 180578101-002

An appeal to demolish an existing building, located at 10415 – 96 Street NW was TABLED to May 25 or 26, 2016.