

Edmonton Subdivision and Development Appeal Board

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Date: March 18, 2016
Project Number: 077017319-007
File Number: SDAB-D-16-069

Notice of Decision

[1] On March 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 9, 2016**. The appeal concerned the decision of the Development Authority, issued on **January 26, 2016**, to refuse the following development:

operate a Major Home Based Business (administration office - UNGARIAN TRUCKING)

[2] The subject property is on Plan 9222836 Blk 4 Lot 10, located at 11828 - 226 STREET NW, within the RR Rural Residential Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A business licence application;
- A Canada Post confirmation of delivery;
- The refused Development Permit;
- Overhead photos of the Site;
- The Development Officer's written submissions;
- The Yellowhead Corridor Area Structure Plan; and
- Letters in opposition to the development from the public.

Summary of Hearing

[4] 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.

[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, Mr. M. Ungarian

- [6] The Appellant reiterated the arguments made in the Grounds for Appeal included in the Notice of Appeal.
- [7] He stated that was applying for a renewal of a previous permit, approved in 2008, to sustain him until he retires. He requires a continuation of the variance allowing his overweight truck to be on Site. The Bylaw restricting the truck's weight was not in existence when he purchased the property and built the shop that stores his truck, and he stated that this should have been taken into account by the Development Authority.
- [8] Parking the vehicle indoors on Site was his sole purpose for applying for a development permit. He does not manufacture or store equipment on Site, nor does he perform any work there.

ii) Position of the Development Officer, Mr. Bacon

- [9] The Development Officer stated that the proposed development is better described as a General Industrial Use rather than a Home Based Business. Even if stored indoors, a truck the size of the Appellant's truck is considered to be industrial. Industrial vehicles should not be stored in residential areas.
- [10] In response to questions regarding whether or not the low density of the area and the presence of industrial Uses in the surrounding area ought to have been taken into account by the Development Authority, he stated that he applied the regulations that apply to a residential zone. Despite the lower density of the area in question, the comings and goings of large trucks may have a negative impact on the neighbourhood. The Yellowhead Corridor Area Structure Plan states that the neighbourhood in question is intended to remain residential.

iii) Position of Affected Property Owners in Opposition to the Appeal

- [11] Ms. Turner, the owner of the land adjacent to the Appellant's property, appeared at the hearing to inform the Board of the neighbourhood's concerns. She stated that, while there are industrial Uses in rural residential zones, the neighbourhood in question should conform to upcoming, low-density housing developments in the surrounding area.
- [12] With respect to the truck, she stated that other neighbours have sought similar development permits and been denied. They store their trucks elsewhere. Also, because the roads in the neighbourhood are not paved, the excessive weight of the truck causes damage to the road. However, she acknowledged that she does not see the truck often. The Appellant leaves the property with his truck for long periods of time, and when he is on Site, he usually stores his truck in the garage.

[13] Mr. Cormier, the neighbour facing the Appellant's property, appeared at the hearing as well. He has a similarly-sized truck and has not received permission to keep it on his property. He stated that the Bylaw should apply to everyone. He has seen the Appellant's truck travel to and from the subject property and has seen the Appellant store industrial equipment on Site in the past.

iv) Rebuttal of the Appellant

[14] In rebuttal, the Appellant stated that he had received confirmation from the City that the roads in the area were able to accommodate the weight of his empty truck.

[15] Also, there have been other trucks in the neighbourhood, and he is the only truck-owner in the neighbourhood that has made efforts to obtain a business permit.

[16] With respect to any noise complaints submitted to the Board, he stated that the neighbourhood is located next to the Yellowhead Highway, which has many trucks travelling on it causing noise.

Decision

[17] 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:

- i)* The development permit expires on March 31, 2019.
- ii)* The tractor unit shall be stored indoors at all times.
- iii)* No trailers are to be stored or present on Site, inside or outside. Trailer(s) shall be stored at an approved storage facility off site.
- iv)* There shall be no repair, servicing, maintenance or washing of the vehicle on Site;
- v)* The business owner must live at the Site. The business Use must be secondary to the residential Use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
- vi)* There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).
- vii)* The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).

- viii) The number of non-resident employees or business partners working on Site shall not exceed two at any one time (Section 75.4).
- ix) The number of visits associated with the business shall not exceed the number approved with this application.
- x) There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
- xi) No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
- xii) The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighborhood.
- xiii) All parking for the Dwelling and Home Based Business must be accommodated on Site.
- xiv) This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).

[18] In granting the development, the following variance to the *Zoning Bylaw* is allowed:

- i) The weight restriction on commercial vehicles imposed by Section 45.1(a) is waived.

Reasons for Decision

[19] Major Home Based Businesses are a Discretionary Use in the RR Rural Residential Zone.

[20] The primary issue before the Board is whether or not the indoor storage of a large semi-tractor on the subject Site constitutes a general industrial Use and whether the storage of that vehicle indoors, which requires the waiving of Section 45(1)(a), would unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring parcels of land.

[21] The Board notes that the permit being granted in this appeal requires that no trailer ever be on Site and that the tractor unit always be stored indoors. This meets the requirements of section 75 of the *Zoning Bylaw*, which regulates Major Home Based Businesses and eliminates any material industrial look of the premises from the neighbouring parcels of land. The permit does not allow any industrial activity on the subject Site such as is defined in section 7.5(2), which defines general industrial Uses. All that is happening on the subject Site related to the Home Based Business is the indoor storage of one piece of equipment.

- [22] The Board seriously considered the opposition to the development by the neighbouring land owners. However, the Board has allowed the requested variance and allowed this Discretionary Use because: a) it has already been in operation since 1998, b) the operation is proximate to the Yellowhead Highway Transportation Corridor, meaning that traffic noise including the noise from large vehicles is already present in the neighbourhood and c) while this is a residential area, it is a rural residential area, meaning that the distances between residences in the neighbourhood is significantly greater than in any other residential Use Class in the City of Edmonton. As these are acreages, the impact of the ingress and egress of the truck to the subject Site is significantly mitigated. The testimony of the neighbours opposed to the development acknowledged that the movement of the truck is visible at most twice a day simply as the vehicle is being driven onto the subject Site and parked indoors and sometimes much less frequently than that.
- [23] The Board has placed significant conditions on this permit, both in terms of its duration and in terms of explicitly limiting the activity related to the Home Based Business to the indoor storage of a single tractor unit. These conditions will also serve to ensure that the variance granted will not unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring parcels of land.
- [24] For the above reasons, the appeal is allowed and the development is granted.

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

Board Members in Attendance

Mr. V. Laberge; Ms. K. Thind; Ms. M. McCallum; Ms. E. Solez

CC:

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

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

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Date: March 18, 2016
Project Number: 175951207-001
File Number: SDAB-D-16-070

Notice of Decision

[1] On March 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 8, 2016**. The appeal concerned the decision of the Development Authority, issued on **January 25, 2016**, to refuse the following development:

**demolish an existing Freestanding On-premises Sign and install (1)
Freestanding Minor Digital On- premises Off-Premises Sign (Off-premises
Digital 6.1 m x 3 m & On-premises non Digital 6.1 m x 1.2 m)**

[2] The subject property is on Plan 9320487 Blk 1 Lot 3A, located at 15840 - 118 AVENUE NW, within the IB industrial Business Zone.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Canada Post confirmation of delivery;
- A Sign Combo Permit Application;
- A refused Development Permit;
- A response from Transportation Services;
- The Development Officer's written submissions;
- The Appellant's written submissions; and
- An online response from the public.

Summary of Hearing

[4] 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.

[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, Mr. T. Balaban

- [6] Mr. Balaban appeared on behalf of the Appellant and reiterated the arguments made in the Grounds for Appeal included in the Notice of Appeal.
- [7] He stated that the Sign applied for will be used for business identification purposes. It would also be used to promote business partnerships through third-party advertising. The property currently has Signage on it, but the business on the property requires a Sign closer to the road.
- [8] He explained that the development permit was refused because of the proposed development's proximity to an existing Sign permit on the neighbouring property to the east. The Sign for which that permit was issued has been removed, but the permit remains in existence. Aside from the separation distance issue, the Appellant has resolved all other issues with the City pertaining to the proposed development.
- [9] Mr. Balaban stated that the Appellant's ability to move the proposed Sign is limited. He then listed examples of other Signs in various locations in Edmonton where two Signs co-exist despite the 100-metre separation distance prescribed by the *Zoning Bylaw*.

ii) Position of the Development Officer, Mr. S. Ahuja

- [10] The Development Officer confirmed that the Appellant's neighbour's existing Sign permit is still valid and that a new application for a Digital Sign has been submitted by the Appellant's neighbour. He stated that, although the previous Sign on the neighbouring Site has been demolished, so long as the permit has not been cancelled by the permit holder, it remains valid until its expiry date. In this case, the permit holder did not apply for cancellation, and the permit expires in 2017. Once a decision is made with respect to the neighbour's application for a new Sign, the original permit will be cancelled.
- [11] He also reminded the Board that, although the Use associated with the existing permit has been dormant for more than six months, this only results in the cancellation of a permit where the Use is non-conforming. The situation before the Board involves an existing permit prescribing a conforming Use.

iii) Position of Affected Property Owners in Support of the Respondent

- [12] Ms. Thomas appeared as a representative for the Living Waters Assembly, the neighbour to the east holding the existing development permit.

[13] She confirmed that Living Waters has applied for a new Digital Sign and supports the Development Authority's refusal of the Appellant's proposed development. When it was brought to her attention that the Appellant had applied for a Sign, she felt strongly that the application would fail given the proposed development's proximity to Living Waters' Sign. However, upon contacting the Development Authority for clarification on the issue, she was told that the Living Waters application for a Digital Sign would be dealt with on a first-come, first-served basis. Living Waters submitted its application for the new Sign in August of 2015.

v) Rebuttal of the Appellant

[14] Mr. Balaban stated that efforts had been made to work together with Living Waters to find a solution and reiterated that the Appellant requires a new Sign in front of the building to advertise the business existing on the subject Site.

Decision

[25] The Appeal is ALLOWED and the decision of the Development Officer is REVOKED. The development is GRANTED with the following conditions:

- i)* The permit shall be approved for a term of not longer than five (5) years, at which time the applicant shall apply for a new development permit for continued operation of the Sign.
- ii)* That, should at any time Transportation Services determine that the Sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the Sign, de-energizing the Sign, changing the message conveyed on the Sign, and or address the concern in another manner acceptable to Transportation Services.
- iii)* That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the Sign.
- iv)* The proposed Sign shall be constructed entirely within private property. No portion of the Sign shall encroach over/into road right-of-way.
- v)* Should the Applicant wish to display video or any form of moving images on the Sign, a new Development Application for a major digital Sign will be required. At that time, Transportation Services will require a safety review of the Sign prior to responding to the application.

[26] In granting the development, the following variance to the *Zoning Bylaw* is allowed:

- i) A variance of 73 metres between the proposed Sign and the other Off-Premises Sign from the 100-metre separation distance required by Section 59.f.3(6)(e).

Reasons for Decision

[27] Minor Digital On-Premises Off-Premises Signs are a Discretionary Use in the IB Industrial Business Zone.

[28] Section 59.f.3(6)(e) of the *Zoning bylaw* requires that a proposed Minor Digital On-Premises Off-Premises Sign must be located 100 metres away from all other Off-Premises Signs. An issue arose as to whether or not this would apply in the case before the Board. There was an Off-Premises Sign located 27 metres away from the proposed Sign. That Sign was demolished in August of 2015. However, the development permit that allowed the construction of that Sign does not expire until September of 2017.

[29] The first issue before the Board was whether or not the separation distance imposed by Section 50.f.3(6)(e) applied when the “existing” Sign existed only in the sense that a development permit was active for the other Sign but that the other Sign was in fact no longer physically present.

[30] Upon a review of Section 17 of the *Zoning Bylaw* dealing with the cancellation of development permits and Section 22 dealing with the expiry of development permits, the Board finds that permits are neither cancelled nor do they automatically expire merely by the demolition of the structure that was built pursuant to that permit. To find otherwise would result in absurd findings. A party could apply for and obtain a development permit for a Sign, not build that Sign, then apply for another Sign immediately adjacent to the first-applied-for Sign and claim that the separation distance did not apply because the Sign that was first in time did not yet physically exist.

[31] The Board finds therefore that the existence of the permit for the On-Premises Sign located on the land immediately adjacent to the subject Site did trigger the operation of the separation distance set out in Section 59.f.3(6)(e). However, this did not end the Board’s analysis. The Board then had to consider whether or not the requirements of s. 59.f.3(6)(e) should be varied pursuant to this Board’s variance power in Section 687(3) of the *Municipal Government Act*.

- [32] The Board finds that this variance should be granted for the following reasons: A) the proposed Digital Sign received the support of the transportation department, and B) the proposed development involves not only the creation of a new Digital Sign but involves the demolition of an existing non-Digital Sign that is closer to 118th Avenue than the proposed Sign. The Development Officer confirmed and the Board agrees that the proposed Sign is properly set back and further set back from 118th Avenue than the existing, static Sign that is going to be demolished. While the proposed application will involve the creation of a Digital Sign, it will not increase the overall number of Signs on the subject Site which mitigates the potential harm of proliferation of Signs.
- [33] The Board acknowledges that the proposed Sign is only 27 metres away from the Sign for which a permit exists but notes that that Sign is a static billboard and not a Digital Sign.
- [34] For those reasons the Board finds that granting the variance will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land. The appeal is allowed.

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

Board Members in Attendance

Mr. V. Laberge; Ms. K. Thind; Ms. M. McCallum; Ms. E. Solez

CC:

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Date: March 18, 2016
Project Number: 158040859-001
File Number: SDAB-D-15-285

Notice of Decision

[1] This appeal dated November 10, 2015, from the decision of the Development Authority for permission to:

to convert an existing Single Detached House into a Child Care Services Use building (60 Children, 2- 12-18 months, 6 -19 months-3 years, 32 - 3-4.5 years, 20 - above 4.5 years) and to construct interior and exterior alterations (Sakaw Daycare) [unedited from Development Permit decision]

On Plan 9122524 Blk 35 Lot 108, located at 5739 - 11A Avenue NW, was heard by the Subdivision and Development Appeal Board on December 2, 2015. The hearing was subsequently adjourned to March 3, 2016.

Summary of Hearing Held on December 2, 2015:

- [2] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [3] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, cc M-26.
- [4] The subject site is zoned RF1 Single Detached Residential Zone.
- [5] The development permit application was refused because of a deficiency in the minimum required number of on-site drop-off spaces; a deficiency in the minimum required number of employee parking spaces; none of the required parking spaces shall be in tandem; a deficiency in the minimum required length of two on-site drop-off parking spaces; and a deficiency in the minimum required number of loading spaces.
- [6] Prior to the hearing, the following information was provided to the Board:
- Appellant's written submissions, received November 10, 2015;

- Letter from the Milhurst Community League in support of the development, received November 24;
- Appellant's additional written submissions received November 25, 2015;
- Email from the adjacent church agreeing to the Appellant's request to allow 6 cars to be parked on the Church parking lot;
- Development Officer's written submissions; dated Nov 12, 2015;
- Copy of the Development Permit;
- Email from Fire Rescue Services, with attachment;
- Copy of Fire Safety Plan;
- Transportation Services Memorandum; and
- One online response in opposition to the development.

[7] The Board heard from Mr. S. Beaver, agent for the Appellant, and Mr. Babiuk, an architect, who provided the following information:

1. They indicated that the documents provided speak to the need for childcare in the area.
2. One school recently just added 150 students because of overcrowding in other schools.
3. The only other daycare is two kilometres from the Site and has 94 spaces, all of which are filled. There is a waiting list.
4. They have support from the community league and the adjacent church.
5. They have 11 signatures of support.
6. They acknowledged that the issues are tandem parking and drop-off spaces.
7. They have applied to the church and the church has agreed that they may use 6 spots in the parking lot.
8. The church is used primarily on Sundays and evenings, but not during the day, and appears to be a perfect solution to the parking problem.
9. Referring to an aerial photo from the Development Officer's written submissions, they noted that the church is directly behind the proposed daycare centre with a large parking lot attached.
10. The church parking lot seems to be the solution to the parking problems, and they propose to have a shuttle bus which will pick up children from the church parking lot and bring them to the daycare site. This shuttle service will operate every 15 minutes during pickup and drop-off times.
11. The Development Plan is fairly flexible and has daycares listed as a Discretionary Use.
12. They noted one discrepancy regarding feedback from a neighbouring property: 5703-11A Avenue opposed the development based on building and student numbers; however, the owner had also signed in support on the petition that was sent around to various houses.
13. With six parking spots at the church, they believe all parking concerns and conditions have been met.
14. They have a new concept with two options that will effectively deal with the parking issue and demonstrate how to best use the property.

15. They have included fire safety plans and believe there are no other difficulties.
16. Mr. Babiuk discussed 2 options for parking:
 - a. Six off-site parking spaces in the church parking lot in the area south of the church. This area will be served by a shuttle bus that will be fitted for children. The bus will be operated by bringing daycare students from the church parking lot where they have been dropped off to the daycare centre. At the end of the day, the shuttle bus will take the children from the daycare centre to the church parking lot, where their parents will pick them up.
 - b. The second option includes three parking spaces on the northeast corner of the Site which is currently a grassed area. All fencing will remain and there will be no other curb cuts or vehicle access to the street from this area. This area will be covered by turfstone, resulting in 50% hard-surfacing and 50% grass. There will also be a gate put into the fence to access 58 street, which is in the cul de sac and would provide extra egress from the Site. This gate will serve pedestrians and cyclists who wish to use the service.
17. Exhibit "A" showed the northeast corner of the Site designated as parking.
18. Both options will show that no additional parking will be needed on the street.
19. They described turfstone as a brick square with an area in the middle for grass, leaving 50% hardsurfaced and 50% green grass. All trees on property will remain.
20. This is a good use of the land; however, it could be returned to single family dwelling as needed.

[8] In response to questions, the Appellant provided the following:

1. Regarding the first option, it was suggested that the church would need to obtain a permit for renting part of its parking spaces for off-site parking.
2. Mr. Burad indicated that he has a contact with the church. This proposal to rent six parking spaces to the daycare was put before their Board and approved. However, they acknowledged that they will need to obtain a permit to rent these spaces. They have not obtained a permit yet.
3. He indicated that the parking lot is unused for six days each week. The church is willing to apply for a permit, and would be willing to have it as condition of this proposal.
4. The daycare will have two vans: one as shuttle bus to and from the church parking lot; the other to pick up children from residences in the area.
5. They stated that the Land Use Bylaw as it presently reads does not consider a shuttle bus as a means of transportation.
6. The back gate in the fence will be used by pedestrians, and they would like to have a condition that there will be no parking provisions for people living in the area.
7. The area covered by the turf stone will have no impact on the play area.
8. Two vans will be parked in the garage overnight, and at the church during the day.
9. There will be eight staff members, and they could possibly have four parking spaces on Site.

10. They will issue discounted transit passes to staff to encourage public transport use rather than private vehicles.
11. The first option would be four parking spaces for staff or for drop off; the second option could have two parking spaces in the garage, three on the turfstone, and one parking space on the driveway.
12. Parents will be required to wait in their vehicles until the shuttle bus arrives to drop off their children.
13. Exhibit B is an aerial photo of school boundary outlines that go down to 31 Avenue, a large part of which is farmland.
14. The majority of children live closer to the daycare centre.
15. They indicated that the majority of students who will use the shuttle bus service will be around 3 years old, and that they may spend 20 to 25 minutes in the shuttle bus.
16. They would consider a decrease in children to meet parking requirements. Decreasing to 40 children would require 4 drop-off spaces, in addition to parking space for staff, so they will still need to utilize some of the parking space at the church parking lot.
17. The Bylaw indicates that parking is not permitted in Front Yards, and that vehicles can only be parked on Driveways.
18. Part of the proposed Site parking in the section option is on the Front Yard.
19. Section 54.2(2)(e)(ii) of the *Edmonton Zoning Bylaw* states that “on a Corner Lot in a Residential Zone, parking spaces, in addition to complying with the other provisions of this Bylaw, shall not be located within the Side Yard abutting the flanking public roadway, other than a Lane.”
20. They therefore indicated they would likely need to apply the first option, which uses shuttle buses and off-site parking from the church.
21. Another option is for the pickup of children who live around the area using the second shuttlebus.
22. Both buses can fit within the Garage.
23. They acknowledged that the proposed development is a Discretionary Use in a RF1 Zone, and that sixty students is considered excessive as that is more typical of a commercial zone.
24. However, the proposed development is on a corner lot: on the rear side, there is a church; and across the Site is a school and green space. The only single family dwellings are in the cul de sac. They intend to install a sound barrier fence and landscaping of shrubs and trees.
25. This neighbourhood requires additional daycare.
26. If the number is decreased to 40 children in the daycare, they would need 2 drop off places plus 1 additional for every 10 children, totaling 5 drop-off spots.
27. The second option would allow only one car to park in tandem on the driveway because they need adequate turning to get into the 3 proposed parking areas at the northeast corner of site. The two shuttlebus vans would still be used.
28. The gate will provide access to the community from a pedestrian walkway.
29. Regardless of whether the development is approved for 40 children or for 60 children, their preference is to include the parking on the church property.
30. There is a bus stop adjacent to the property, which also allows access for students from the school across the street.

31. They indicated that 60 children will require 8 staff members. Two staff parking spaces will be in the garage. They will also have bicycle parking spots, and will encourage staff to use public transit by providing them bus passes at a reduced cost.
32. With transit being nearby plus shuttle buses, they have determined that parking will be adequate.
33. They recognize that with either 40 or 60 daycare children, they will need variances. They will need both on-site and off-site parking, and they are providing options for the board's consideration.
34. The Board indicated that they understood the need for daycares in this area of the city as well as other areas of the city.
35. Section 80(1) states:

A Child Care Service shall comply with the following regulations:

1. in all low density Residential Zones the Development Officer shall, when making a decision on the suitability of the Child Care Service for the location proposed, give preference to those facilities that are located:
 - a. abutting a collector or arterial road,
 - b. on a corner Site,
 - c. adjacent to or in community facilities such as a school, park, church or community centre; or
 - d. adjacent to commercial areas or multi-family development;
36. The Board referred to an area map on page 20 of the agenda and noted that Section 160 does not indicate off-site parking as either a permitted or discretionary use in the RF1 Zone.
37. In response, the Appellants indicated that the width and length of designated parking spots for three vehicles in the Front Yard would be adequate if the second option is implemented.
38. The proposal to park in the Front Yard had not been shown to residents of the cul de sac since it was new information developed only a few days ago.
39. They are prepared to consider hedges, trees, and other types of additional screening.

[9] The Board heard from Mr. Erica Peacock, Development Officer from the City of Edmonton's Sustainable Development Department, who provided the following information:

1. The application under appeal was for a daycare for 60 children. Childcare is a Discretionary Use in the RF1 Zone. Sixty students would require 4 staff parking spaces, plus 7 for drop off, for a total 11 spaces.

2. There are only 4 parking spaces on Site. The City of Edmonton Transportation Services opposes the development due to the proposed parking.
3. She acknowledged that the development meets three of the preferences as outlined in subsections 80(1)(a) to (c) 80.1(a-c) with respect to Child Care Services, as the proposed development abuts an arterial road, is located on a corner Site, and is adjacent to a church.
4. She acknowledged that the subject property is a good Site for the proposed development, and would retain the residential character of the neighbourhood, pursuant to Section 80(3) of the *Edmonton Zoning Bylaw*.
5. The proposed development requires 7 drop-off parking spaces, pursuant to Section 80(6) of the Zoning Bylaw, which deals with the number of drop-off spaces in relation to the number of children in the daycare. The Bylaw provides no upper limit to the number of drop-off spaces.
6. The remaining issue before the Board relates to parking.
7. She agreed that there is no off-site accessory parking listed as a Permitted or Discretionary Use in the RF5 Zone.
8. However, Section 54.2(2)(b) states that for Child Care Services Use, “parking spaces may be provided on a Site located remotely, but no further than 120.0 m from the Site.” The proposed off-site parking is within 120.0 metres of the church.
9. In addition, Section 54.2(2)(d)(i) states:

Notwithstanding the definition of Accessory in this Bylaw, Accessory parking spaces for non-residential Uses may be located on another Site where... the principal Use Class to which the parking is an Accessory Use is a Permitted or a Discretionary Use on the Site to be used for additional parking.

10. The church is a Permitted Use in the RF5 Zone, therefore, the proposed off-site parking on the church lot could be approved under this method.
11. This method would require that the Appellant link the proposed development to the adjacent church in the permit application.
12. She noted that it is atypical to have 60 spaces for childcare in a RF1 Zone.
13. When questioned about the methodology for parking space calculations, she stated that the Development Authority does not round up the numbers. For example, if the daycare was for 39 children, the total requirement for drop-off spaces would be four: 2 for the first 10 children, and 1 for each of the next 10. However, even using this method, off-site parking would still be required for staff members.
14. She discussed the various configurations for the two options proposed by the Appellant, as well as further requirements for parking and child pickup at the church parking lot.
15. She did note that a shuttlebus van offering pick-up and drop-off services will need a longer drop-off space than an ordinary car vehicle drop-off.

[10] The Appellant provided no further submissions in rebuttal.

Decision:

[11] The Board decided to adjourn the appeal until March 2 or 3, 2016.

Reasons for Decision:

[12] The Board finds the following:

1. Following discussion between the Board and the Appellant about the various requirements that would be needed regarding this application to allow the Board to consider the parking at the adjacent church as part of the application, both the Board and the parties in attendance agreed that the application would have to be amended.
2. Accordingly, the Appellant requested that the matter be adjourned so that they could amend their application.
3. The Development Officer consented to the adjournment, provided that she be provided a minimum of 8 weeks to review the revised application and to consult with Transportation Services.
4. As a result, the Board adjourned the matter to March 2 or 3, 2016.
5. The Board noted that the affected neighbours within the 60 metres notification area would need to be renotified.

Summary of Hearing Held on March 3, 2016:*i. Position of the Appellant, Sakaw Daycare*

[13] Mr. D. Burad and Mr. B. Brar spoke on behalf of the Appellant.

[14] They expressed their understanding that the Board granted their request to adjourn the December 2, 2015 hearing to obtain revised plans to submit to the City for consideration. They complied with that request and filed a new application, and the City has since issued a refund for the filing fee.

[15] They understood that the City would review the proposed combined parking proposal for off-site parking. The Board questioned whether they had approached the Church to discuss the Church obtaining a development permit to provide accessory parking services. The Appellant stated that it did not see the point in the church doing that work should the SDAB refuse the development. It was their view that they would first need to get permission from the SDAB.

[16] Their position is that the Driveway width and length makes it possible for them to meet their parking needs. There is approximately 55 feet of space from the Garage to the end of the lot. Eight feet of that space is a City easement, but even with eight feet reduced, the Driveway would still be approximately 48 feet in length.

- [17] They identified two legal parking spaces in the Garage and another two on the Driveway. They recognize that tandem parking is not permitted for drop-off along the Driveway, but in their view, the width and length of the Driveway makes tandem parking a viable option, notwithstanding non-compliance with development regulations. In addition, the daycare's provision of a pickup/drop-off effectively reduces the need for drop-off spaces to two.
- [18] The Appellant reiterated its proposal to encourage transit use amongst staff members. Upon questioning, the Appellant also clarified that it could make it a condition of employment that staff must park at the Church's parking space so as to alleviate concerns about parents and children having to cross a public roadway to transition between the Church parking lot and the daycare.
- [19] The Appellant disagreed with the Development Officer and Transportation Memo's response regarding the non-feasibility of off-site accessory parking. It will only be on very rare occasions that there may be some overlap between Church needs and daycare needs for use of the Church parking lot. Most of the time, the church parking lot is completely empty. The deficiency in the Church's parking as noted in the Development Officer's report is negated by timing, as there is minimal overlap between their needs.
- ii. *Position of the Development Officer, Ms. E. Peacock*
- [20] The Development Officer provided a summary of her main concerns related to parking.
- [21] She acknowledged that following the adjourned hearing on December 2, 2015, the Appellant submitted a new development proposal, decreasing the number of children to 39, and the number of staff to five.
- [22] As such, seven total parking spaces are required – three for staff parking, and four for drop-off. However, only two drop-off parking spaces have been provided on-site in accordance with the development regulations, which excludes tandem parking options. As such, only two on-site staff parking spaces and two on-site drop-off spaces are provided, resulting in an overall deficiency of three total parking spaces.
- [23] She expressed no concerns with respect to six Accessory parking spaces being provided at the Church, as the Bylaw permits accessory parking within 120 metres of the Site.
- [24] However, Transportation Services reviewed the shared parking proposal. The Church is required to have 75 on-site parking spaces, but the Church itself is deficient by 14 spaces. As such, the Church actually does not have the ability to provide Accessory parking.
- [25] It is her view that tandem parking is not a feasible option for pick-up and drop-off, which is intended for quick entrance and egress; tandem parking would prevent this purpose.

[26] She has no concerns with respect to the deficiency of one Loading Space, and would grant a variance in this regard. Her report focused on her review of the revised shared parking proposal.

iii. Rebuttal of the Appellant, Sakaw Daycare

[27] The City's submissions are based entirely on the regulations, which the Appellant recognizes its revised proposal does not meet.

[28] However, it is the Appellant's view that as demonstrated by the new revised plans, there is sufficient space for people to drive onto the Driveway using one side, and back out of the Driveway using the other side.

[29] The Appellant was also of the view that an automobile only requires about a width of seven feet, and the Driveway is approximately 22 feet in width, which is more than sufficient for cars to navigate on and off the Driveway for drop-off purposes.

[30] The Appellant confirmed that traffic along 58 Street and 11A Avenue typically begins around 7:30 or 7:40. People can park on both sides of 58 Street and 11A Avenue.

[31] The Appellant drew attention to the community's support for the development.

Decision:

[32] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED, subject to the following conditions:

1. Six accessory vehicular parking spaces shall be provided for the development at 5803-11A Avenue NW. Where required parking spaces are not on the same Site of the development or Use, these parking spaces shall be identified as parking spaces for that development or Use through the use of appropriate signage, in accordance with Section 54.2(2)(c);
2. Exterior lighting of the facility shall provide for a well-lit environment, in accordance with Section 80(7);
3. Where on-site outdoor play space is provided, pursuant to the Provincial Child Care Licensing Regulation, 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, in accordance with Section 80(8)(a);

4. Outdoor play space shall be securely enclosed on all sides, in accordance with Section 80(8)(c);
5. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer, in accordance with Sections 55(4) & (5);
6. Landscaping shall be in accordance to the approved Landscape Plan, Section 55 and to the satisfaction of the Development Officer;
7. Staff must park at the remote parking Site on the Accessory parking stalls provided by the Church;

[33] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. Variance to the four on-site drop-off parking spaces required under Section 80(6), to permit two on-site drop-off parking spaces.

Reasons for Decision:

- [34] Childcare Services are a Discretionary Use in the RF1 Single Detached Residential Zone.
- [35] The main issue before the Board dealt with was parking, for both fixed parking spaces as well as drop-off spaces.
- [36] The existing Site currently contains four on-site parking spaces, provided as tandem parking. Two of the existing parking spaces on the subject Site are within the Garage, and the other two are on the Driveway.
- [37] Four on-site drop-off spaces are required, but as drop-off spaces are intended for quick entry and egress, tandem parking solutions are not suitable, and therefore a variance of two drop-off spaces is required.
- [38] The Applicant has obtained the permission of the religious assembly at 5803 – 11A Avenue for six Accessory parking spaces. Provided that the requirements under s. 54.2(2)(b) are met, the application has sufficient parking for the proposed development.
- [39] The Development Officer confirmed that the Accessory parking spaces located at the religious assembly, while remote from the subject Site, is within 120 metres of the subject Site and is zoned in a way such that Childcare Services are a Discretionary Use on the Site where the six Accessory parking spaces will be provided.
- [40] Accordingly, provided that the signage required under Section 54.2(c) is provided, which the Board has made a condition of this decision, the parking requirements of the *Edmonton Zoning Bylaw* will be satisfied.

- [41] The Board notes that the Development Authority was concerned with the use of the church Site for parking because: a) the Church was itself deficient by 14 parking spaces for its own principal use, and b) the Accessory parking spaces are located across the street from the subject Site.
- [42] With respect to the concern that the Church is itself deficient by 14 spaces for its own principal use, the Board accepts the submissions of the Appellant to the effect that the usage of the daycare and the church will not, for the most part, coincide with each other, and therefore, that concern is mitigated.
- [43] The Board has considered that the roadway that must be crossed is not an arterial road, and it is the Board's view that it can be traversed safely by children accompanied by parents. Furthermore, it will be predominantly the staff who will use the designated Accessory parking spaces.
- [44] The Board also took note of the need for daycare services in general located in close proximity to a school, as well as the broad community support that this application enjoys, including many of the residents of the cul de sac on which this development is located.
- [45] For the above reasons, the Board finds that granting the development and the necessary variances 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. As such, the appeal is allowed and the development is granted.

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

Board Members in Attendance

Ms. K. Thind; Ms. M. McCallum; Ms. E. Solez

c.c.

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 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a. the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b. the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.