



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 22, 2019
Project Number: 287881338-001
File Number: SDAB-D-19-031

Notice of Decision

- [1] On March 7, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 11, 2019**. The appeal concerned the decision of the Development Authority, issued on January 16, 2019, to approve the following development:

To change the use from Health Services to Child Care Services (80 Children) and to construct interior and exterior alterations (above grade outdoor play area, rear exterior stairway and removal of windows).

- [2] The subject property is on Plan RN60 Blk 2 Lot 5, located at 11024 - 127 Street NW, within the (CB1) Low Intensity Business Zone. The West Ingle Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s reasons for appeal;
 - The Respondent’s written submission including signatures of support;
 - One e-mail in support of the proposed development; and
 - One on-line response in opposition to the proposed development.

Preliminary Matters

- [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 Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, D. Lesher:

- [7] Mr. Lesher owns the apartment building across the lane and north of the subject site.
- [8] His tenants have experienced problems with other people using their parking spaces. The tenants have had to park on the street.
- [9] This permit has only 40 percent of the recommended parking and no loading spaces. Eighty children will bring many vehicles to the area.
- [10] There is a renovation company operating south of the subject site that has a large number of employees that use company vehicles that require parking along 110 Avenue.
- [11] It was his opinion that signing a lease agreement for additional parking spaces with the owner of an adjacent site is not feasible because a business will eventually re-open and they will require parking.
- [12] The proposed Child Care Service does not fit into the neighbourhood because it will add to the existing parking problems.
- [13] Mr. Lesher provided the following information in response to questions from the Board:
- a) A prosthetic shop previously operated from the subject site. The Knights of Columbus use the building on the immediately adjacent site to the north.
 - b) St. Albert Trail is a one way roadway from 111 Avenue. Vehicles have to turn left when the roadway intersects with 127 Street, a one way roadway traveling north.
 - c) There is a bicycle lane located on the west side of 127 Street and on street parking available on the east side of the street.
 - d) There is a hair salon operating from the building immediately south of the subject site with several parking spaces at the rear of the building adjacent to the lane. A restaurant/pub previously operated from the site immediately south of the hair salon, but the building is currently vacant. A convenience store is proposed for this site.
 - e) He did not experience parking problems when the restaurant/pub was operating.

- f) He could not confirm how many parking spaces were available on the site of the renovation company.
- g) There are 28 one-hour parking spaces available along St. Albert Trail that could be used by parents dropping children off at the proposed development.
- h) He has called a towing service twice a year to remove illegally parked vehicles from his tenant's parking spaces, but he could not provide any details about who was parking in the spaces.
- i) His only concern regarding the proposed development is that it has the potential to increase the existing parking problem.
- j) He acknowledged that any development on this site will require a parking variance.
- k) He receives the majority of parking complaints during the day and this is when employees of the proposed development will be using the four spaces at the rear of the building and when parents will be dropping off and picking up their children.
- l) There are numerous bus stops within close proximity to the subject site.

ii) Position of the Development Officer, J. Kim:

- [14] The Development Authority did not attend the hearing and the Board relied on Ms. Kim's written submission.

iii) Position of the Respondents, S. Davies and T. Yulo:

- [15] Mr. Davies assists day care providers to find suitable locations and with the development permitting process in Edmonton and Calgary.
- [16] Work on the subject site started approximately six months ago. The original number of children proposed was 103, but then reduced to 80 because of the parking requirements.
- [17] He and Ms. Yulo determined that this area is in need of an education focused day care. There is a YMCA day care operating in the area with a one year waiting list, a Sports Themed day care with 37 spaces and a French day care with 16 spaces.
- [18] Mr. Davies canvassed the neighbourhood on three different occasions and talked to most of the neighbours. He did not speak to the Appellant because he does not reside at his apartment building and tenants of the apartment building would not provide his contact

information. The majority of neighbours support the development and he submitted three letters of support.

- [19] At the outset of the hearing, he spoke to the Appellant in an attempt to address his concerns and explained that the proposed hours of operation are 6:30 a.m. to 6:30 p.m., Monday to Friday and that the Child Care Service will not operate on the weekends. In addition, there will never be 80 vehicles arriving at the site at one time.
- [20] In response to a request from the Development Officer, he monitored the unrestricted public parking close to the park that is located less than half a block away from the subject site and found that it is never more than 30 percent occupied during the evening hours or on weekends. There are 28 parking spaces and most times during his two week study, he found that there was a minimum of 19 spaces available. In addition to these parking spaces, there are 13 on street parking spaces along 127 Street. These spaces are usually 60 to 70 percent occupied between 8:30 a.m. and 5:30 p.m. but are most often unoccupied at 6:30 a.m.
- [21] There are 11 parking spaces available on the Knights of Columbus site and the building is only used two or three times per month. They will be most affected by the proposed development and have verbally agreed to rent their parking spaces to the Child Care Service if required.
- [22] Only one of the property owners that reside on 128 Street expressed concern about the proposed development because of the potential to generate excessive noise.
- [23] It was his opinion that most of the concern is the result of problems with the bar that previously operated in this area. A convenience store is being proposed for the previous site of the bar.
- [24] The subject building is approximately 4,000 square feet in size but they are only permitted to use 3,200 square feet of the total area.
- [25] It was his opinion that parents dropping off and picking up their children will not park at the Appellant's site because it is too far away from the subject site.
- [26] Most child care employees do not own vehicles and use public transit. There are many bus stops located in close proximity to the subject site.
- [27] It was his opinion that the subject site is a perfect location for a Child Care Service because of the number of parking spaces available to provide pick up and drop off spaces.
- [28] The stamped site plan was referenced to confirm that ten parking spaces are provided on site. The Lease Agreement provides seven designated parking spaces for their business.
- [29] Mr. Davies and Ms. Yulo provided the following information in response to questions from the Board:

- a) It was acknowledged that the development permit was approved with a variance granted to allow four on-site parking spaces instead of ten and waive the requirement to provide one loading space.
- b) It was his opinion that seniors accessing St. Andrews Centre would prefer to park closer to the facility. Large events at St. Andrews are usually held during the evening or on weekends when the Child Care Service will not be operating.
- c) Ms. Yulo explained that the busiest times for drop off and pick up are between 6:30 a.m. and 7:45 a.m. and between 4:30 p.m. and 5:30 p.m. The demand for parking is short term because drop offs and pick ups are only ten minutes long.
- d) There are only four hours per day when parking volume is high and the parking spaces will be unoccupied during the rest of the day. All of the parking spaces along St. Albert Trail are located within 100 metres of the entrance to the building.
- e) They have not received any feedback from the Community League.
- f) They plan to employ between six and ten staff members who will be working shifts.
- g) The planned hours of operation are from 6:30 a.m. to 6:00 p.m., Monday to Friday. The facility will not be open on the weekends except for the possibility of holding an open house on a Saturday.
- h) Mr. Davies indicated that he would accept a condition imposed by the Board to provide parking to comply with section 7.5 of the Lease Agreement.

iv) Rebuttal of the Appellant

- [30] It was Mr. Leshner's opinion that two weeks is a small window of observation to monitor parking in the area and questioned the discrepancy in the findings regarding the number of unoccupied parking spaces along St. Albert Trail.
- [31] He has witnessed visitors from St. Andrews Centre using the parking spaces along St. Albert Trail.
- [32] It was his opinion that verbal discussions regarding the use of parking spaces on the Knights of Columbus site are not sufficient. There should be a written agreement if they agree to allow the proposed Child Care Service to use their parking spaces.
- [33] Mr. Leshner expressed confusion regarding the actual number of parking spaces being provided and where they will be located.

[34] He has personally witnessed parking problems in the area and it was his opinion that the proposed Child Care Service will bring too many people and vehicles into the area.

Decision

[35] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority subject to the five **CONDITIONS** imposed by the Development Authority.

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

1. The minimum required number of ten on-site parking spaces per Section 54.2, Schedule 1(A)(31) is varied to allow a deficiency of six on-site parking spaces, thereby allowing four on-site parking spaces.
2. The minimum required loading space per Section 54.4, Schedule 3 is waived.

Reasons for Decision

[37] A Child Care Service for 80 children is a Discretionary Use in the (CB1) Low Intensity Business Zone.

[38] The proposed development requires variances for the minimum required number of on-site parking spaces and a loading space.

[39] The Board finds that the proposed Child Care Service is an appropriate Discretionary Use at this location; it is reasonably compatible with the surrounding uses and no valid planning reasons were presented to convince the Board not to grant this Use.

[40] The Board grants a variance for the minimum required number of parking spaces and waives the requirement to provide one on-site loading space for the following reasons:

- a) Based on the evidence provided by the Appellant his only objection to the proposed development was based on potential interference with his tenants' parking spaces located at the rear of the Apartment Building. In the past, the Appellant has typically received two tenant complaints per year about a vehicle illegally parked in their parking space. He could not confirm whether or not the past problems were attributable to prior Uses operating from the subject Site or to some other source.
- b) In response to questions, the Appellant agreed that unoccupied on street parking spaces are regularly available along St. Albert Trail, within 100 metres of the subject Site, the majority of the time.

- c) The Board notes that the proposed change in Use actually results in a decrease in the minimum required number of on-site parking spaces in comparison to the currently approved Use for the subject Site.
 - d) On street parking is available on the east side of 127 Street directly in front of the subject Site. Based on the evidence provided by all of the affected parties, it has been their experience that it is extremely rare that all of this on street parking is ever completely occupied.
 - e) There are also 28 parking spaces available immediately northeast of the front of the subject Site less than 100 metres from the entrance to the proposed development along both sides of St. Albert Trail. These spaces are closer in proximity to the proposed development than the private parking spaces used by the Appellant's tenants. Based on the findings of the parking study and the evidence provided by all parties, occupancy of these spaces varies between 30 and 70 percent on weekdays during drop off and pick up times for the proposed Child Care Service.
 - f) The Board finds that the staggered 15 minute drop off and pick up times typical of a Child Care Services Use will be accommodated by the restricted one hour parking spaces and will also be complimentary to the parking demands of other existing commercial Uses located along 127 street and St. Albert Trail.
 - g) The subject Site is well serviced by public transit. Both the Appellant and the Respondent provided evidence that there are at least three transit stops located within 100 metres of the subject Site.
 - h) The Board received one letter of support and none of the most affected property owners who reside along 128 Street, immediately west of the subject Site raised any parking concerns.
- [41] The Respondent provided a copy of a lease agreement with the landlord that makes seven designated parking spaces available at no additional cost. The Board considered that these parking spaces may also ameliorate any potential parking problems. However, the Board has not given significant weight to this factor as these spaces are located on other Sites, some of which are currently vacant but may become occupied by new developments in the future.

[42] For all of the above reasons, the Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbouring properties and is of the opinion that granting the required 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. S. LaPerle, Mr. A. Bolstad, Mr. R. Hachigian, Mr. J. Kindrake

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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



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Date: March 22, 2019
Project Number: 188667407-012
File Number: SDAB-D-19-032

Notice of Decision

- [1] On March 7, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 30, 2019**. The appeal concerned the decision of the Development Authority, issued on January 29, 2019 to refuse the following development:

To continue to operate a Childcare Service with 30 children, and modify the hours of operation from a before and after school, to all day (Reference DP 188667407-007 and Subdivision and Development Appeal Board file 18867407-010).

- [2] The subject property is on Plan 6143NY Blk 23 Lot 9, located at 14804 - 78 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions;
 - One e-mail in opposition to the proposed development including photographs; and
 - One on-line response in support and one on-line response in opposition to the proposed development.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Photograph of the subject site submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, B. Romanesky, representing Permit Masters and S. Jessani, owner/operator:*

- [8] The two conditions under appeal limit the service provided to elementary school-aged children from kindergarten to grade six and only allows before and after school care service.
- [9] A Child Care Service to provide before and after school care for a maximum of 23 children was approved by the SDAB in 2016. A subsequent application was made in 2018 to increase the number of children from 23 to 30. The development permit application was refused and subsequently approved by the SDAB based on the finding that it would not impact the use, enjoyment or value of neighbouring properties.
- [10] The site plan was referenced to illustrate the parking plan that was approved in 2016. Three approved pick up and drop off spaces are located on 78 Street and six additional parking spaces are on-site (four can be accessed from the lane, one is provided in the existing attached garage and one on the driveway). The parking did not change with the approval that was granted in 2018.
- [11] The subject site is located within one block of a school and services two other schools in the area.
- [12] The modest change to the conditions will allow the business to offer services to families with multiple children in the neighbourhood.
- [13] Ms. Jessani is currently experiencing a competitive disadvantage because parents do not want to have their children at two different facilities. Parents tend to stay with the Child Care Service that they find for their younger children as they age.

- [14] The Development Officer failed to evaluate the incremental impact associated with the inclusion of preschool children and did not evaluate the planning merits of the application.
- [15] The proposed addition of preschool age children complies with all the requirements of section 80 of the *Edmonton Zoning Bylaw*. There is no increase in the parking requirement or the pick up and drop off area. A total of nine approved parking spaces are provided, for a surplus of two parking spaces which exceeds the requirements of section 54.2, schedule 1.
- [16] The hours of operation are Monday to Friday, 7:00 a.m. to 6:00 p.m., and will not change with the addition of pre-school age children. The only change is that there will now be children at the site between 8:30 a.m. and 11:30 a.m. Drop offs and pick ups will not change.
- [17] A large number of school age children are dropped off directly at school in the morning by their parents when the weather is appropriate.
- [18] Currently, two staff members are on-site for most of the day and a third staff member is available between 3:30 p.m. and 6:00 p.m. when needed. If the proposed change is approved, the third staff member position will be changed to a full time position.
- [19] The concerns outlined in the letter of opposition received from a neighbouring property owner are serious matters that require police involvement. However, these activities are not triggered by the Child Care Service.
- [20] The addition of pre-school age children will not generate excessive noise. It was noted that some of the concerns, including excessive garbage on the site and the state of the fence are Bylaw Enforcement matters. The City asked Ms. Jessani to follow the garbage pickup schedule for this neighbourhood which she has done.
- [21] Ms. Jessani has been forced to turn away between 18 and 25 families because she cannot accept pre-school age children. Families do not consider her service as an option because she cannot service multiple children from the same family.
- [22] This is the only Child Care Service on the north side that cannot accept pre-school age children which is what she wanted to do when she originally applied for a development permit in 2016. However, because of the number of neighbours who attended the initial SDAB hearing in opposition to the development, she decided to scale back the number of children and the service provided.
- [23] Mr. Romanesky and Ms. Jessani provided the following information in response to questions from the Board:
- a) Ms. Jessani was not aware of the practical business impacts of her initial decision to scale back the Child Care Service.

- b) The parking requirements were different when the development application was made in 2016 and she was restricted to a maximum of 23 children. After the parking requirements were changed, a development permit application was made to increase the number of children to 30. This change was approved by the SDAB in 2018 but the service was still limited to before and after school care.
- c) The development permit is limited to a maximum of 30 children regardless of their ages. The site is currently servicing 16 children.
- d) The photograph of the parking space at the rear of the property submitted by her neighbour was taken before it was hardsurfaced.
- e) The rear yard is not used as an outdoor play space. The children are taken to the school playground located within one block of the site to play. The playground is well equipped with all types of play structures and activities for the children.
- f) The most significant change will be that multiple children from one family will be able to attend the facility and there will be pre-school children at the site between 8:30 a.m. and 11:30 a.m. However, the children will either be inside the facility or playing in the park. The pre-school age children will nap in the afternoon between 12:00 p.m. and 3:00 p.m.
- g) A yard maintenance company is hired to clear the snow and cut the grass.
- h) They would like to replace the fence along the west lot line but cannot come to an agreement with the neighbour.
- i) None of the neighbours have identified a relevant parking or planning impact and removing the conditions will not change the nature of the use which has already been approved.
- j) Mr. Romanesky explained that the bar they had originally agreed to was set too low and noted they were prompted in part due to the parking variances that were required at the time of the original development permit application. It was his opinion that removing these two conditions would not create an intensity of use that is no longer consistent with the neighbourhood.
- k) Having pre-school age children on site between 8:30 a.m. and 11:30 a.m. will not have an incremental impact because the parking and drop off and pick up provisions will not change.
- l) Ms. Jessani has a good relationship with many of the other neighbours and some neighbours help with the maintenance of the subject site. She did not ask any of her neighbours to provide written support for the proposed change.

ii) Position of the Development Officer, M. Moran:

[24] The Development Authority did not attend the hearing and the Board relied on Ms. Moran's written submission.

Decision

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

1. The hours of operation shall be from 7:00 a.m. to 6:30 p.m., Monday to Friday;
2. The outdoor play space shall be fenced on all sides and all gates shall be self-latching. (Reference Section 80.3.a);
3. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55.4 & 5.
4. 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);
5. 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);
6. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance with Section 54.6.

Reasons for Decision

[26] This is an appeal of a development permit application to "continue to operate a Childcare Service with 30 children, and modify the hours of operation from a before and after school, to all day (Reference DP 188667407-007 and Subdivision and Development Appeal Board File 18867407-010)".

- [27] The proposed Child Care Service is a Discretionary Use in the (RF1) Single Detached Residential Zone, pursuant to section 110.3(1) of the *Edmonton Zoning Bylaw* (the *Bylaw*). It complies with all the applicable development regulations.
- [28] This Site has been the subject of two prior decisions of the Subdivision and Development Appeal Board for a Child Care Service Use. Both decisions approved the Child Care Service Use subject to certain conditions.
- [29] At the first hearing (SDAB D-16-133), the Board considered the widespread opposition to the proposed development and found that it “appears to be to the existence of the Child Care Service itself, and not necessarily to the specific requested variances.” The Board allowed the Discretionary Use for the following reasons:
- [63] This development, as it is a Discretionary Use, must be assessed as to whether it will be incompatible with existing surrounding land uses. The Board has placed several conditions on the development permit, which include restricting the hours of operation, limiting the number of students to 23 children, and restricting the proposed development to a before/after school care program instead of a full daycare program.
- [64] As such, these conditions will reduce the potential impact of the noise, traffic, and parking issues that could be generated by the development to the extent that this development will not be incompatible with the existing uses. Accordingly, the Board exercises its discretion to allow the change of Use.
- [30] Ultimately, the Board approved Development Permit 188667407-001 with variances to the required development regulations for parking in place at that time and subject to several conditions, including four which are most relevant to this appeal:
- 1) The development shall have no more than 23 children.
 - 2) The children must be elementary school-aged children, from kindergarten to grade 6.
 - 3) The business shall be run as a before/after-school car service only.
 - 4) The hours of operation shall be from 7:00 a.m. to 6:30 p.m., Monday to Friday.
- [31] In 2018, after the applicable regulations changed effectively eliminating all parking variances, the Appellants reapplied to increase the number of children to 30 as a Discretionary Use with no variances. The Board (SDAB D-18-032) described the appeal and reasons for refusal as follows:
- [39] This appeal concerns a request to increase the number of children to 30; no variances to the regulations of the *Edmonton Zoning Bylaw* are required, and the development was refused by the Development Officer based solely on his belief that the increase in children would adversely and materially impact the use, enjoyment or value of neighbouring properties.

[32] In that case, the Board considered the demand for this Use, the relaxation of development regulations and the concerns of the neighbours. The Board disagreed with the Development Officer and approved the Child Care Use as a Discretionary Use for up to 30 children, subject to several conditions, including three which are most relevant to this appeal:

- 1) The children must be elementary school-aged children, from kindergarten to grade six.
- 2) The business shall be run as a before/after-school care service only.
- 3) The hours of operation shall be from 7:00 a.m. to 6:30 p.m., Monday to Friday.

[33] Subsequently, the conditions have proven to create practical business impediments for the Appellants and so they applied for a new development permit seeking approval to continue a Child Care Service Use at this location for up to 30 children and removal of the previously imposed conditions 1 and 2 noted immediately above to allow the proposed development to offer unrestricted child care during the conditioned hours of operation for children of any age.

[34] The development permit application was refused for two reasons. First, the Development Officer reiterated reasons in the 2018 refusal. In the Development Officer's opinion the excessive scale of the development (30 children) will not be compatible with the existing Single Detached House Uses in the area because: it will create excessive garbage and noise from the outdoor play space; it is not in keeping with the low intensity of the intended uses in this residential area; and it will adversely impact the adjacent developments, and materially interfere with and affect the use, enjoyment and value of neighbouring properties. Second, the Development Officer was of the opinion that prior approvals were made by the SDAB with the understanding that the business would only have school age children and the conditions were put in place to minimize impacts on surrounding property owners.

[35] In this appeal the Appellants argued:

- a) The Development Authority failed to evaluate the incremental impacts associated with the inclusion of pre-school children and did not evaluate the planning merits of the proposed application.
- b) As the Board had already determined that the Use of the Single Detached House as a Child Care Service for up to 30 children is appropriate at the subject Site and as that the change to allow children of all ages during the currently approved business hours will have little incremental impact, the proposed development should be approved.

[36] The Board assessed whether or not the proposed development with the removal of conditions 1 and 2 would be reasonably compatible with the surrounding land Uses and if there was a valid planning reason to deny the appeal and refuse the proposed development:

- a) The subject Site complies with the locational criteria in section 80 of the *Bylaw*. This is a partial indicator of compatibility in terms of location.
- b) The Board considered that substantial amendments were made to the *Bylaw* between 2016 and 2018 relaxing previous development regulations to facilitate Child Care Service Uses in Residential Zones.
- c) The Board considered that it received mixed community response to the current application.
- d) The level of community opposition appears to have decreased significantly from that received for the original development permit for a Child Care Service in 2016. The Appellants provided verbal evidence that several neighbours are very supportive and in fact assist with some of the ongoing maintenance of the subject Site.
- e) The Board received one letter of support without comment from the property owner directly across 78 Street from the subject Site.
- f) One e-mail and one on-line response in opposition were also received and considered.
- g) One e-mail in opposition from the owner of a property across the lane and further up the block reiterates an ongoing overall objection to this business in a residential area. Currently, they have concerns with upkeep (shoveling and lawn care); a blown sign which hit a truck and failure to pave the rear parking area. The adjacent neighbour immediately to the east reiterated concerns with some of these upkeep issues and provided illustrative photos. This neighbour also expressed concern regarding several acts of vandalism that have occurred on her property. However, the Board did not receive any supporting evidence that these acts of vandalism could be attributed to patrons or staff of the Child Care Service. This neighbour was specifically concerned with the possible increase in daytime noise from children using the rear outdoor play area if conditions 1 and 2 are removed.
- h) The Appellants indicated that they do maintain the property and that the photos are out of date and are isolated occurrences. They agree the vandalism is serious and deny any involvement. The Appellants provided a more current photo of the subject Site (Exhibit A) and indicated that they have complied with the condition to provide hard surfacing as defined in the *Bylaw* and they regularly maintain the property. They did erect a new fence along the flanking roadway, but did not fence an outdoor play area because they use the nearby school yard rather than the rear yard for all outdoor play.

- i) Based on the evidence provided, the Board finds that an outdoor play space is not provided on the subject Site. Children attending the Child Care Service use the playground located in a nearby school yard that is located one lot to the north across 149A Avenue from the subject Site. This situation reduces potential noise impacts.
- j) The Board considered the Development Officer's comments that the conditions had been imposed previously due to multiple concerns of neighbours:
 - a. Parking was a major concern for adjacent property owners in past appeals and part of the rationale for the imposition of conditions. However, none of the current concerns received from adjacent property owners for this appeal hearing were related to parking. The subject Site is a corner lot which provides more than the required number of on-site parking spaces and easily accommodates the drop off and pick up of children attending the Site. No parking variances are currently necessary.
 - b. As noted above, the noise concerns are addressed by the fact that the nearby school yard serves as the outdoor play space.
 - c. The Board noted that as worded, the current conditions would allow for school age children to be at the subject Site in the morning prior to afternoon kindergarten in any event. With the removal of the two conditions, there is no change to the number of children, nor to the hours of operation.
 - d. The Board received no evidence of any record of complaints concerning the issues cited in prior appeals specific to this Child Care Services Use actually being made to the City since 2016.

[37] For the reasons above, the Board finds that that removing conditions related to the age of children and the restriction of services to the provision of before and after school care is unlikely to result in a change in impact of a magnitude that would make the Child Care Services Use incompatible with surrounding residential Uses. Given that the hours of operation and the maximum number of children will remain constant, the Board was not persuaded of any valid planning reasons to deny the proposed development.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. S. LaPerle, Mr. A. Bolstad, Mr. R. Hachigian, Mr. J. Kindrake

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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