

# **Edmonton Subdivision and Development Appeal Board**

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Date: March 24, 2016  
Project Number: 147624860-012  
File Number: SDAB-D-16-071

## **Notice of Decision**

- [1] On March 9, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on February 16, 2016. The appeal concerned the decision of the Development Authority, issued on February 11, 2016, to approve the following development:

To change the Use from General Retail Stores to Bar and Neighbourhood Pub and to construct interior alterations (115 sq. m. of Public Space / 70 seats - BLACK DIAMOND BAR AND GRILL).

- [2] The subject property is on Plan 30HW Blk 13 Lot D, located at 11310 - 107 Avenue NW, within the CB1 Low Intensity Business Zone. The Central McDougall/Queen Mary Park Area Redevelopment Plan applies to the subject property.

- [3] The following documents were received prior to the hearing:

- Approved development permit; signed development permit and supporting documents;
- Community consultation documents;
- Email correspondence from Queen Mary Park Community League;
- Email correspondence and written submissions from the Development Officer;
- Parking variance justification;
- Signed Waiver (Current Planning);
- Memorandum from Transportation Services;
- Letter from Dr. C. Nsaliwa, Edmonton Immigration Services Association; and
- Letters of support and photographs provided by the Respondent.

## **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*, RSA 2000, c M-26.

*i) Position of the Appellant, Mr. A. Ramsay*

- [6] Mr. Ramsay, representing the Bricklayer's Union, does not oppose the Respondent's proposed development, a restaurant and bar, but opposes the variance of 52 parking spaces granted by the Development Officer.
- [7] Mr. Ramsay currently shares the parking lot with the Edmonton Immigration Services Association ("EISA"), with whom he has coordinated to ensure that the parking needs of both businesses are met, as best they can be.
- [8] Mr. Ramsay's Union has three or four extra parking spaces; when required, EISA's clients use on-street parking, when necessary.
- [9] Both businesses operate during evening hours, which is when parking is most congested.
- [10] In addition to the limited availability of parking, Mr. Ramsay advised the Board that he believes the increased traffic from the proposed restaurant and bar will create a safety risk for families and children of the neighbourhood.
- [11] Finally, Mr. Ramsay stated that the roads surrounding the proposed development are in poor condition and will be further distressed by the increase in traffic to the area.

*ii) Position of Mr. P. Kowal, the Development Officer, and Mr. M. Rowan and Mr. R. Metcalf from Transportation Services*

- [12] Mr. Kowal confirmed that parking calculations in new and mature neighbourhoods are based on the same criteria.
- [13] When the development permit was initially approved, it was approved for a general retail store, which had a parking variance of six spaces. That variance was excluded from the current development permit since this is a change of use application, so the net increase is 35 parking spaces (12 for the office space and 40 for the restaurant and bar), for a total of 52 parking spaces.
- [14] Mr. Kowal advised the Board that regardless of the Use for the subject Site, a parking variance will be required.
- [15] He advised that even though the neighbouring day care facility and restaurant have offered to accommodate some of the overflow parking from the proposed development, Sustainable Development would not consider that as a factor in their parking analysis. When asked by the Board why this had been factored in to the previous Development Officer's decision to approve the proposed development, he advised the Board that doing so was an error. He also advised the Board that a "formal" agreement would have to be submitted to the Development Authority for consideration of these additional parking spaces.

- [16] He argued that the community is in favour of the proposed development because people want a bar and restaurant within walking distance from their homes; it enhances the neighbourhood because it is pedestrian friendly.
- [17] Mr. Rowan and Mr. Metcalf, from Transportation Services, confirmed there is parking on 113 and 114 Streets and that it is very well-used, but did not have a breakdown of specific parking use. The surrounding residential streets have unrestricted parking, save for 107 Avenue, which has peak hour parking bans and restrictions.
- [18] They confirmed that roadway rehabilitation is planned for the Queen Mary Park area, but that 107 Avenue will remain in its current state. In addition, a parking study and plan is to be developed for the Queen Mary Park area.
- [19] In making its recommendation, Transportation Services addressed mode-splitting (i.e. how people will travel to the proposed development). They used a general prediction of how they believed people would access the proposed development, but did not conduct a formal study of this nature.
- [20] Transportation Services is neither supportive, nor opposed to the parking variance.

*iii) Position of the Respondent, Mr. N. Abadiko, and Ms. L. Viarovo, from the North Edge Business Association*

- [21] Mr. Abadiko provided the Board with photographs of 114 Street and 107 Avenue that show what the neighbourhood looks like at various times from Friday at 5pm, to Sunday at 3pm. The photographs show that there is available on-street parking on these streets, other than in two loading zone areas.
- [22] He canvassed the community within the 60 metres notification radius to determine whether or not they were supportive of his business and was met with a positive response. Most of the customer base for Mr. Abadiko's business consists of families who live in the community and plan to walk to the bar and restaurant to have dinner. He does not know what the bar portion of the demographic will look like at this point because it is a new development.
- [23] Ms. Viarovo, who is highly involved in the community on behalf of the North Edge Business Association, confirmed the location shown in Mr. Abadiko's photographs. She advised the Board that evening parking is difficult in the area because parking is free in the area, which makes it enticing for people to use it.
- [24] Asked by the Board whether the parking variance will have a material adverse impact on the neighbourhood, Ms. Viarovo argued that it would not have an adverse impact because the community is supportive of the proposed development, and the Board should consider a balance of the interests of the community as a whole.

*iv) Rebuttal of the Appellant*

- [25] Mr. Ramsay advised the Board that he agreed with the concerns addressed by Transportation Services.
- [26] He is also concerned that there have been a number of parking variances granted for the subject Site.

**Decision**

- [27] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority. In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- (1) a parking variance of 44 parking spaces is granted pursuant to Schedule 1 of Section 54.2 of the *Edmonton Zoning Bylaw*.

**Reasons for Decision**

- [28] The proposed development is a Permitted Use in the CB1 Low Intensity Business Zone.
- [29] The Respondent engaged in community consultation and provided evidence of a positive response for the development of the neighbourhood bar and restaurant in the area. He received 17 positive responses and no opposition. A number of the people the Respondent consulted with indicated that they would find this business “pedestrian friendly”, requiring no other mode of transportation, thereby increasing the amenities of the neighbourhood.
- [30] The Appellant’s suggestion that the increased traffic brought by the proposed development creates a safety concern for the area was not supported by any evidence, and was not raised as a concern in the Respondent’s community consultation.
- [31] The Queen Mary Park Community League provided documentation showing support for the proposed development, but acknowledged there is a parking issue in the Community.
- [32] The North Edge Business Association was present and provided support for the proposed development.
- [33] The Ethiopian Community Association provided written support for the proposed development.

- [34] Two adjacent properties to the East of the proposed development, being a day care and a restaurant, also support the proposed development and have indicated they are prepared to offer some off-street parking in their parking lot.
- [35] Transportation Services does not oppose the parking variance. This is a major transit route that will enable clientele to use other modes of transportation to attend the business.
- [36] The Board acknowledges that the Appellant, the Bricklayer's Union, has concerns with respect to parking. They indicated, however, that it would not directly impact their parking requirements.
- [37] The Edmonton Immigration Services Association provided a letter voicing concern with respect to parking for their clients that they believe may be restricted by the proposed development.
- [38] It is the Board's finding that the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members:  
Ms. K. Cherniawsky  
Ms. C. Chiasson  
Mr. A. Nagy  
Ms. K. Thind

**Important Information for the Applicant/Appellant**

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

*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.*