



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
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Date: June 10, 2016
Project Number: 188096244-001
File Number: SDAB-D-16-132

Notice of Decision

- [1] On May 26, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 29, 2016. The appeal concerned the decision of the Development Authority, issued on April 12, 2016, to approve the following development:

To operate a Major Home Based Business (Hair Salon - ROCC*TRENDZ
INC)

- [2] The subject property is on Plan 3875P Blk 57 Lot 14, located at 10523 - 130 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay 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:
- Respondent's written submissions and attachments;
 - Copy of the development permit application and approved development permit;
 - Copy of the Development Officer's written submissions; and
 - One online response in opposition to the development.

Preliminary Matter

- [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.

Summary of Hearing*i) Position of the Appellants, Mr. C. Stolte and Ms. E. Stolte*

- [6] Mr. C. Stolte appeared on behalf of the Appellants. He was accompanied by Ms. K. Thurbert and Mr. F. Friedman from the neighbourhood.
- [7] Mr. Stolte submitted that the Home Based Business will create additional traffic and parking stresses. Currently, on-street parking along 129 Street is in demand, and people also park illegally in the lane across from his property.
- [8] Mr. Stolte noted that the Applicant is a non-resident of the subject property, and the development application information indicates that there will be more than one employee working from the home. Mr. Stolte stated that his concerns would be mitigated if the development was for a resident of the subject property, with only the Applicant as the sole employee.
- [9] He confirmed that the Applicant spoke with him and had assured him that she intended to be the sole hairdresser working out of the subject property, and that approximately four customers a day would be anticipated.
- [10] The Board referred Mr. Stolte to the conditions of the approved permit, and questioned whether the conditions would address his concerns. In response, Mr. Stolte stated that the conditions were confusing. For example, one of the conditions prohibits a non-resident from operating the business, but the Applicant is a non-resident. Another condition stipulates that a minimum of 3 parking spaces are required to accommodate client and resident vehicles, but two vehicles are already parked on the Driveway. Since the Applicant is a non-resident, Mr. Stolte expressed concerns that she would use one of the parking spaces when she arrives for work, further impacting the existing traffic and parking stresses.

*ii) Position of Affected Property Owners in Support of the Appellant*Mr. F. Friedman

- [11] Mr. Friedman owns the property north of the proposed development. His primary concern was with the use of the lane as well as the parking situation along 129 Street.
- [12] Two Semi-detached Houses are being constructed on a subdivided lot just north of the proposed development, which will result in a gradual increase to density and non-resident on-street parking. These factors will further impact the existing illegal parking on the lane.

- [13] Mr. Friedman submitted Exhibit “A”, a letter in opposition to the development from a neighbour with young children. The neighbour expressed concerns about being sandwiched between a busy lane and roadway.
- [14] Upon questioning by the Board, Mr. Friedman explained that the orientation of the properties along the lane is somewhat unique: some properties have an approximate one and a half metre parking pad that backs onto the lane; others have garage doors that back directly onto the lane. Depending on the location of the property, some owners are able to park vehicles on the lane, while others cannot.
- [15] Mr. Stolte confirmed that the Applicant had attempted to consult with him about the proposed development, but because he was unavailable at the time, she left him a letter explaining her intentions. The letter did not alleviate his concerns, nor did he believe that she would be able to address his concerns, so he did not seek her out for further discussions.

Ms. K. Thurburt

- [16] Ms. Thurburt submitted that the lane identified by Mr. Stolte and Mr. Friedman was, in fact, an alley and not a street. It is very narrow with existing traffic and parking issues, which should be taken into account when planning for better urban environments with higher densities.
- [17] Her property is slightly north of the subject development, with a detached garage for two parking spaces that back onto the lane. She noted that the conditions placed upon the development do not address issues related to illegal parking on the lane and other traffic concerns. Further, the condition limiting the operating hours to end at 7 p.m. will still affect children who have returned home from school by that time.
- [18] Ms. Thurburt explained that the Applicant sought to consult with her after the permit had already been approved by the Development Authority. In her view, her concerns about traffic and parking cannot be addressed by the Respondent.
- [19] Ms. Thurburt confirmed that all houses fronting onto 129 Street do not have front attached garages.

iii) Position of the Development Officer, Mr. B. Liang

- [20] Referring to an aerial photo of the property and surrounding areas, Mr. Liang noted that the subject property has a unique configuration. The houses to the east of the lane consist of Single-detached Houses with rear detached garages that back onto the lane, whereas the houses to the west have front attached garages that front onto the lane because the rear of these properties face onto Groat Valley.

- [21] Mr. Liang explained that one of the ways that the Development Authority can control traffic impacts is by imposing conditions. Under Section 15 of the *Edmonton Zoning Bylaw*, a Development Officer has the discretion to impose conditions for Discretionary Uses that go beyond the main regulations governing Home Based Businesses under Section 75.
- [22] Mr. Liang proceeded to explain the reasoning behind the conditions he placed on the permit:
- 1) Condition 5 requires a minimum of 3 off-street vehicular parking spaces for clients and residents. Should the property owner choose to store supplies in the garage, the Development Authority would consider the subsequent elimination of the two parking spaces in the garage as a violation of the permit.
 - 2) Condition 8 limits the hours of operation and prevents overlapping appointments. In his view, this condition provides adequate control of the number of client visits onto the property. Condition 8 also prohibits the creation of a waiting area which further prevents the possibility of overlapping client visits and minimizes parking impacts.
- [23] Mr. Liang clarified that the Applicant had verified via a phone conversation her intention to move into the subject property.

iv) Position of the Respondent, Ms. E. Krajcovic

- [24] Ms. Krajcovic was accompanied by her brother-in-law, Mr. D. Moroz.
- [25] Ms. Krajcovic submitted that parking for the Home Based Business will not infringe upon neighbours. Referring to pictures submitted with her written documents, she clarified that the lane is in fact a two-way lane, and that only the portion of the lane exiting onto 129 Street is one-way. Referring to Exhibit "C", she disagreed that the lane is an alley, as normal back alleys are 15 feet in width, whereas the subject lane is 21 feet.
- [26] She understands that she must be a resident of the subject property, but she is currently waiting for her current lease to expire before moving. She explained that part of her motivation for moving into the subject property stems from her father's ailing health. The development, if approved, would allow her to care for him while continuing to operate her business. In the meantime, she would like to have the permit in place and to address any concerns from neighbours prior to moving in. She confirmed her understanding that she would not be able to operate her business until she becomes a resident of the subject property.
- [27] During questioning by the Board, Ms. Krajcovic confirmed that she intends to operate her business only on weekdays. She has no interest in working on weekends or holidays. She anticipates an average of four customers a day, but that number may vary from two to six clients per day.

- [28] She confirmed that her door-to-door community consultation resulted in seven signatures of support, and one verbal opposition to the development. She was unable to reach the owner of 10543 – 130 Street, but left a letter with her email and contact. She also did not consult with the owners of 10542 – 129 Street and 10546 – 129 Street, as those properties were under construction.
- [29] Mr. Moroz clarified that when the development permit application was made, a City employee explained that since one resident (the Applicant) would be coming to the residence five times a week, the application form should specify that five employees a week are anticipated. As such, the information on the application form may be misleading. The only employee will be the Applicant, Ms. Krajcovic.

v) *Rebuttal of the Appellant*

- [30] Mr. Friedman noted that there appears to be some inconsistency with respect to the Applicant's statement that she wished to apply for a permit in advance so as to address potential neighbourhood concerns, while failing to consult with neighbours until after the appeal had been filed.
- [31] He expressed some concerns about the operating hours ending at 7 p.m., and questioned whether this would allow clients to arrive just prior to closing hours.
- [32] In his view, the conditions are not expressed in such a way as to assist with enforcement, and he would like to avoid a situation where neighbours police each other.
- [33] Ms. Thurburt noted that although the lane is an alley, it is also effectively a street in the amount of parking and traffic that it accommodates. As such, the proposed development represents an additional burden upon this lane.

Decision

- [34] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED, subject to the CONDITIONS placed upon this development as per the approved Development Permit, 188096244-001, issued on April 12, 2016.

Reasons for Decision

- [35] Major Home Based Businesses are a Discretionary Use in the RF1 Single Detached Residential Zone.
- [36] The proposed development satisfies all development regulations in the *Edmonton Zoning Bylaw*. The Board confirms that this permit contains a condition that requires the operator

of this business to reside at the subject site, meaning that the residency requirement for a Major Home Based Business is satisfied.

- [37] The primary objections raised by the appellants focused on the issue of traffic congestion and off-site parking. However, the conditions of the permit, placed on this development by the Development Authority, are such that they will reasonably reduce any traffic or parking problems caused by this development.
- [38] First, the Development Authority has severely limited the intensity of this home based business. Section 75(4) of the *Edmonton Zoning Bylaw* allows a Major Home Based Business to have up to two non-resident employees, whereas this permit allows no non-resident employees. This condition will limit the traffic and parking demands caused by this development.
- [39] Second, the proposed development is restricted in hours, and restricted to a single customer at a time, and the conditions of the permit prohibit the creation of a waiting room.
- [40] Third, the development meets all of the parking regulations in the *Edmonton Zoning Bylaw*, and provides ample on-site parking. The board finds that this development will not, therefore, cause undue pressure on on-street parking in the neighbourhood.
- [41] For the above reasons, the board finds that this Discretionary Use is compatible with existing land use in the area, and that the development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the appeal is denied and the development is granted.

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

Board Members in Attendance

Ms. N. Hack; Mr. R. Hachigian; Ms. P. Jones;

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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SDAB-D-16-133

Project Number 188667407-001

An appeal by _____ to change the use of a Single Detached House to a Child Care Service and to construct interior alterations was **TABLED** to June 22, 2016.



**EDMONTON
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*Subdivision &
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10019 - 103 Avenue NW
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Date: June 10, 2016
Project Number: 176691253-001
File Number: SDAB-D-16-062

Notice of Decision

- [1] On February 24, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 27, 2016. The appeal concerned the decision of the Development Authority, issued on December 1, 2015, to refuse the following development:

To operate an Automotive/Minor Recreation Vehicle Sales/Rental and to relocate an existing mobile office (Peace Motors).

- [2] The subject property is on Plan 0520041 Blk 60A Lot 8, located at 9115 - 127 Avenue NW and Plan 0520041 Blk 60A Lot 9, located at 9035 - 127 Avenue NW, within the DC2 Site Specific Direct Control Provision (DC2.864(2)). The CN Intermodal Facility and Area Area Redevelopment Plan ("ARP") 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:

- Appellant's written submissions;
- Copy of the development permit application with plans;
- Copy of the development permit refusal, with various attachments and correspondence;
- Copies of Canada Post receipts confirming delivery of the permit refusal;
- Copy of the Development Officer's written submissions dated February 17 and 24, 2016;
- Copies of the Board's previous three tabling letters; and
- One online response in opposition to the development.

Preliminary Matter

- [4] This appeal hearing, which was previously tabled on February 24, March 23, and April 20, 2016, was raised from the table.

- [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 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, Re/mex Excellence

- [7] The Appellant was represented by Mr. D. Roy and Mr. E. Agoto.
- [8] Mr. Roy explained that the property owner applied for rezoning of the Site, which was approved by City Council in 2014. The application for rezoning included a proposal for three buildings on three adjacent lots. At the time, the actual dimensions of the proposed buildings were not provided because the development was still in the Development Permit application stage. The owner had intended to build substantial properties on these lots, but due to difficulties obtaining financing, the lots have been used for vehicle storage for a number of years.
- [9] Mr. Roy confirmed that the mobile office sales trailer, existing without permits, is approximately 73 square metres. He acknowledged that the trailer is currently incorrectly-oriented north-south instead of east-west, and is a temporary building. The Owner is prepared to re-orient the trailer as soon as possible. Should the Board deny the appeal, the business running out of the trailer would no longer be able to operate.
- [10] Mr. Roy stated that the Owner would like assistance from the City to move the development forward by allowing for a transitional “bridge” or plan to develop the properties in an orderly manner. The Appellant therefore requests variances to the deficiencies noted in the permit refusal decision.
- [11] The Presiding Officer drew attention to the Board’s powers with respect to appeals of development decisions within a Direct Control Zone. Referring to Section 641(4) of the *Municipal Government Act*, he noted that the Board is unable to substitute the development authority’s decision unless it can be shown that the Development Officer failed to follow the directions of council.
- [12] In response, Mr. Agoto submitted that the issue lies in the interpretation of the building size. He stated that although the existing trailers are incorrectly oriented north-south instead of east-west as required by the Site Plan under DC2.864, the Owner is prepared to correct the problem as soon as possible. Further, he submitted that the Development Officer erred by requiring the entire parking area to be paved. In Mr. Agoto’s view, the Bylaw requires paved lots only for public parking. The lot is not meant for public parking; rather, it is restricted to the display and storage of vehicles, which is accessory to the sales or rental of those same vehicles.

- [13] The Board noted that Section DC2.864.4.a states that “Development of the Site shall be in general accordance with the Site Plan attached to this provision, as Appendix I.” The Board referred to Appendix I of DC2.864, and questioned whether the subject trailer adheres to the approved Site Plan. Mr. Agoto acknowledged that the trailer is a fraction of the size of one of the three buildings shown in the appendix; however, in his view, the Site Plan in Appendix I does not define specific dimensions. It is intended to be a “futuristic” representation of the proposed development.
- [14] The Presiding Officer noted that the Site Plan is, in fact, legislated by Bylaw. Further, what is before the Board is an application for a trailer existing without permits, not the future development of building structures.
- [15] Upon questioning, Mr. Roy clarified that the application is not necessarily for a temporary trailer use. The property owner has signed a lease with renters for the use of the trailer. As such, the Owner is requesting that he be provided with more time so that the trailer can be oriented in accordance with the Site Plan, while he works toward building the permanent structures.
- ii) Position of the Development Officer, Ms. E. Peacock*
- [16] Ms. Peacock explained that she was representing the Development Officer who issued the refusal decision.
- [17] After summarizing the development application that was the subject of this appeal, Ms. Peacock explained that DC2.864 is effectively an agreement made between a property owner and City Council. Development Officers therefore have no authority to vary regulations under this DC2 Zone.
- [18] Furthermore, the intention of creating DC2.864 through Bylaw is to ensure development of high quality permanent structures, and not a temporary trailer. If the trailer were to exist temporarily for the purpose of servicing the permanent building, she may have some ability to allow it, so long as the development of the Site were complying with DC2.864. However, in this case, what is existing cannot be approved under the provisions of DC2.864.
- [19] Ms. Peacock also spoke with Planning Coordination to pursue alternative options, and was informed that since Automotive/Minor Recreation Vehicle Sales/Rentals is a Listed Use under DC2.864, they would normally consider “interim development” on the Site for a period of five years. However, they still do not have the authority to vary the regulatory requirements under DC2.864, and in this case, the proposed development does not comply with DC2.864.
- [20] With respect to the Development Officer’s finding of a deficiency in hardsurfacing, Ms. Peacock suggested that Section DC2.864.5.a might provide some potential for variance,

as it refers to the hardsurfacing requirements under Section 54.6 of the *Edmonton Zoning Bylaw*, which the Development Officer would typically have the discretion to vary. However, she noted that Section DC2.864.5 is technically restricted to “Additional Development Regulations for General Industrial Uses”, whereas Automotive and Minor Recreation Vehicle Sales/Rentals are considered a Commercial Use Class.

iii) Rebuttal of the Appellant

[21] Mr. Roy reiterated that the property owner hopes to be provided an opportunity to comply with the requirements of DC2.864.

Decision

[22] The appeal is DENIED and the decision of the Development Officer is CONFIRMED. The development is REFUSED.

Reasons for Decision

[23] The subject Site is zoned DC2.864 under Bylaw 16782, which was passed on June 24, 2015. Accordingly the Board’s jurisdiction is restricted by Section 641(4)(b) of the *Municipal Government Act*, which states:

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

[24] Section DC2.864.1 states that the General Purpose of the DC2 Zone is “To allow for a limited range of commercial, light industrial, automotive and service uses that operate in such a manner that no nuisance factor is created or apparent outside an enclosed building with development regulations to ensure compatibility with surrounding land uses.”

[25] Section DC2.864.4.a states that “Development of the Site shall be in general accordance with the Site Plan attached to this provision, as Appendix I”, which has been attached to this decision as “Schedule A”.

[26] Additionally, Section DC2.864.4.1 states:

All buildings shall be constructed and finished with durable materials designed to maintain the initial appearance of the development throughout the life of the project. The Development Officer may require that the appearance of metal, or concrete block walls exposed to public view from beyond the Site be improved where such walls are inconsistent with the finishing materials or appearance characteristic of surrounding development.

- [27] Upon review of the proposed plans and Appendix I of the DC2, the Board finds that the development of the Site is not in accordance with the site plan attached as Appendix I. The Board makes this finding for the following reasons:
- 1) Appendix I requires three large permanent structures, whereas the application before this Board is for a small, temporary trailer office.
 - 2) The trailer that is the subject of this appeal currently exists without permits, and is located outside the building pocket area designated in Appendix I.
 - 3) The buildings in Appendix I are to be oriented east-west so that they front upon 127 Avenue. The trailer that currently exists without permits is oriented north-south, meaning that the trailer fronts onto the interior of the Site. As such, the Board finds that the proposed development does not comply with DC2.864.4.a, which requires development in accordance with Appendix I.
- [28] The Development Officer therefore followed the directions of Council when refusing the permit application, which by itself, is enough to dispose of this appeal pursuant to Section 641(4) of the *Municipal Government Act*.
- [29] However, there are additional reasons why the Board confirms the Development Officer's decision to refuse this permit, as other sections of the DC2 Bylaw are not being adhered to in the proposed development.
- [30] Section DC2.864.4.1, quoted above, also has not been followed. The Board, having reviewed photographic evidence of the trailer, existing on the subject Site without a permit, finds that it is not finished with durable materials. The skirting around the bottom of the building appears from the photographs to be made of corrugated metal, and as the Board has no other evidence other than the photographs, finds as fact that it is skirted with corrugated metal. The remainder of the building is clad with siding which is in various orientations which present an appearance that is anything but durable.
- [31] Finally, the Board notes that the General Purpose of this DC2 Zone as set out above, requires that the allowed Uses "operate in such a manner that no nuisance factor is created." The photographic evidence shows that this trailer, which is in a state of disrepair, is surrounded on the exterior by propane tanks, vehicles and general debris, which does create a nuisance factor in contravention of the General Purpose of this DC2 under Section DC2.864.1. The Board also notes that evidence has been submitted in

opposition to the development regarding a complaint pertaining to the disrepair of the building.

- [32] Accordingly, the Board finds that the Development Officer followed the directions of Council in refusing this permit application, and therefore, this Board denies the appeal and confirms the decision of the Development Authority.

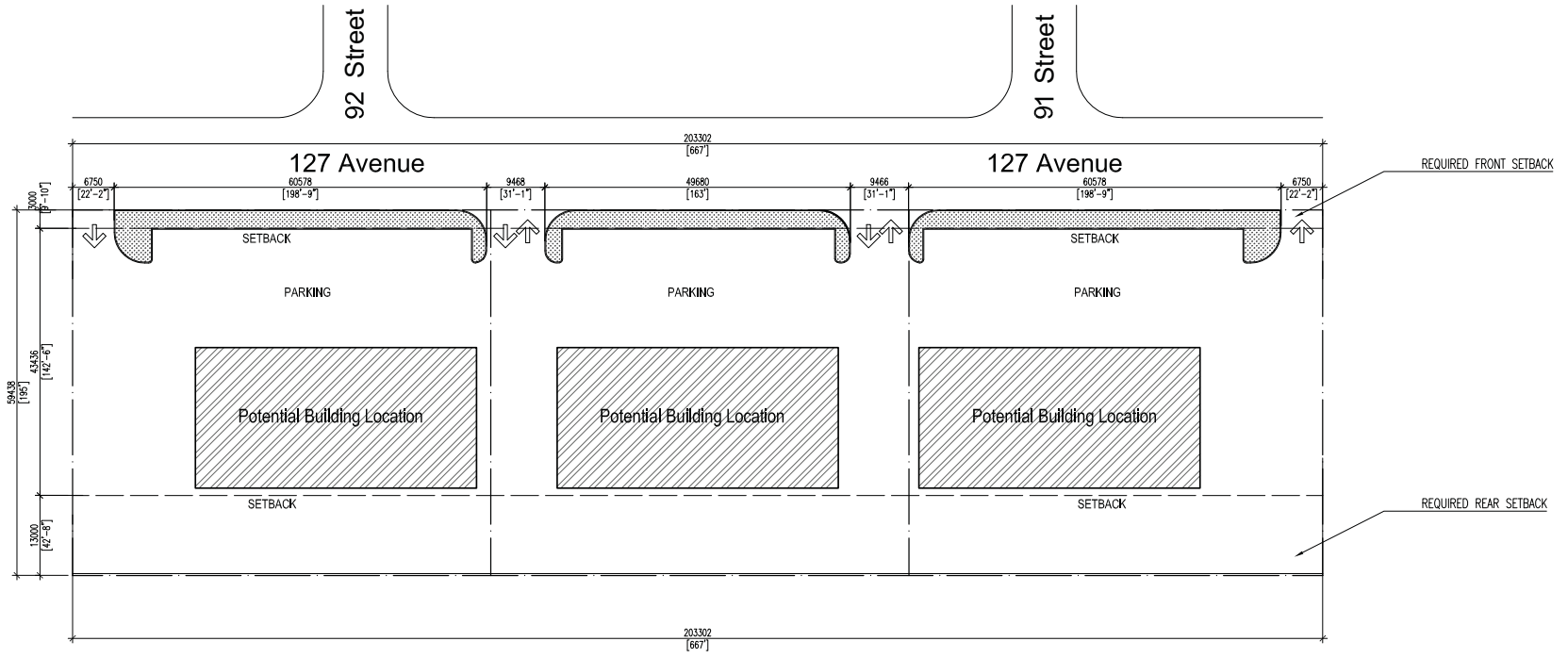
Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. N. Hack; Mr. R. Hachigian; Ms. P. Jones; Mr. N. Somerville

Enclosure

Schedule A



1 SITE PLAN
SK#8a SCALE: 1:750

CNR RAIL YARD

Aug. 29, 2013 - 10:06am P:\302 Projects\2012-24 Diamond Automotive\2 Design Resources\35 Preliminary Design Drawings - Pre-Design\2012-24_Site Plan.dwg

client / project / title:
DIAMOND AUTO YARD
9115-127 AVE
EDMONTON, ALBERTA

Do not scale drawings. Verify all dimensions on site and report all errors and omissions to the Architect. Comply with all Codes and Regulations applicable to the performance of the work.

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drawn by: OBM	reviewed: DS
AS SHOWN	approved: DS
date: August 27, 2013	project no: 2012-24

revisions:	
no	description
0	DATE ISSUED FOR
no	date
no	description
no	revision no:

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SK#8a

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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