

## **Edmonton Subdivision and Development Appeal Board**

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4415 - 76 Avenue NW  
Edmonton AB T6B 0A3

Date: May 22, 2015  
Project Number: 113079430-001  
File Number: SDAB-D-15-089

### **Notice of Decision**

This appeal dated April 9, 2015, from the decision of the Development Authority for permission to:

Construct a General Industrial Use building (Building 4), two additions (Buildings 2 & 3) and a surface parking area on an existing General Industrial development (Allwest Auto Parts); existing without permits

on Plan 3777HW Lot 2, located at 4415 - 76 Avenue NW and Plan 1223062 Blk 1 Lot 2A, located at 4415 - 76 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 7, 2015. The decision of the Board was as follows:

#### **Summary of Hearing:**

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

The Board heard an appeal related to the decision of the Development Authority to approve, subject to conditions, an application to construct a General Industrial Use building (Building 4), two additions (Buildings 2 & 3) and a surface parking area on an existing General Industrial development (Allwest Auto Parts); existing without permits, located at 4415 - 76 Avenue NW. The subject site is zoned IM Medium Industrial Zone. The Appellant is appealing conditions of the approved permit.

The condition that requires the removal of existing concrete on the City road right-of-way (boulevard) between the centre and easterly access to 76 Avenue and restoration of the boulevard is the subject of this hearing.

Prior to the hearing the Board received a written submission from the Development Authority dated April 13, 2014, and a revised development permit on May 4, 2015.

The Board heard from Mr. Kowal, representing the Sustainable Development Department, who explained to the Board that one of the conditions imposed on the original approval was removed

because it is no longer required and a revised development permit was issued, and provided to the Board on May 4, 2015. A copy of the revised development permit was marked as Exhibit "A".

The Board then heard from Mr. Ablett, representing Transportation Services, who referenced a drawing, marked as Exhibit "B", to illustrate the concrete area that needs to be removed and restored as boulevard.

The Board then heard from Mr. and Mrs. Wiersma, representing the Appellant, Allwest Auto Parts, who made the following points in support of the appeal:

1. They want to leave the concrete driveway as it has existed since 1991.
2. A set of photographs, marked as Exhibit "C", was provided to the Board illustrating some of the unsightly properties in the area, which are a result of heavy trucks driving over landscaped areas, another site with an existing wide driveway entrance, and the entrance to their site.
3. A map of the surrounding area, marked as Exhibit "D", was provided to the Board indicating nearby properties with existing wide driveway entrances.
4. If this condition is revoked or varied by the Board, Mr. Wiersma asked that the Letter of Credit referred to in the conditions be adjusted to reflect a reduction in the work required as a result.

Mr. and Mrs. Wiersma provided the following responses to questions:

1. Some of the trucks that access the site are more than 50 feet long.
2. There is extremely heavy traffic along 76 Avenue, especially during the day when their business is operating.
3. If the concrete is removed leaving a single lane driveway, eastbound trucks attempting to access their site from 76 Avenue would need to use both eastbound lanes on 76 Avenue to make the turn required onto their Site
4. Driving over the restored landscaped boulevard, which is the subject of the condition, would result in trucks tracking mud on their site and the public roadway.
5. It will be difficult to comply with the imposed condition to remove a section of the existing concrete because of the location of an existing power pole.
6. The condition requiring the restoration of the boulevard will create more problems than allowing the access to remain as it exists.

The Board then heard from Mr. Ablett, representing Transportation Services, who provided the following information:

1. A set of aerial and street-view photographs, marked Exhibit "E", were provided to the Board illustrating the subject site with the existing accesses to 76 Avenue and indicating the portion of the boulevard that is the subject of the imposed condition.
2. 76 Avenue is a busy four-lane collector roadway with a speed limit of 60 kilometres an hour and a traffic load of 9,000 vehicles per day.

3. The existing concrete in the boulevard area creates the illusion of an overly wide access that can be confusing to drivers.  
It is the opinion of Transportation Services that restoring the landscaped boulevard would clearly define the entrance and egress to the subject site and improve safety along 76 Avenue. It is essential to provide safe access and egress from private properties.
4. Transportation Services is attempting to standardize all access points whether for new or existing developments.
5. A portion of the City of Edmonton Access Management Guidelines (the “Guidelines”), marked as Exhibit “F”, was provided to the Board.  
According to these Guidelines the minimum required Throat Length for the subject site is 12 metres and restoring the boulevard would comply with this requirement.
6. The removal of a portion of the 3-metre concrete boulevard, as required in the subject condition contained in the revised Development Permit, requires a Letter of Credit of \$8,000.00, a reduction of approximately \$10,000.00.
7. Completion of the work required by the subject condition will result in a 6.0-metre wide access on the most westerly side of the site, a 6.0-metre wide access in the centre of the site and a 9.0-metre wide access on the most easterly side of the subject site. Page 2 of Exhibit “E” provides an aerial illustration of this.
8. Section 53 of the *Edmonton Zoning Bylaw* requires that all access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction.
9. The proposed development is also subject to the *City Streets Development Control Bylaw*, Bylaw 12513, and the *Traffic Bylaw*, Bylaw 5590.

Mr. Ablett provided the following responses to questions:

1. The Guidelines established by Transportation Services apply to both established and new developments. The access that exists to the subject site is not consistent with the Guidelines, as the access would have to be between 11.5 and to 13.5 metres wide to accommodate large trucks.
2. The option to increase the width of the most easterly access from 76 Avenue to the subject site would be considered. However, the Appellant was not agreeable to that option and wants to retain the access that already exists on the site.
3. Increasing the width of the most easterly access to 11.5 metres would not interfere with the existing power pole and would make allow large trucks to access the site.
4. He acknowledged that eastbound trucks attempting to access the site from 76 Avenue would have the most difficulty.
5. It was his opinion that only providing landscaping around the existing power pole would not be sufficient.
6. Transportation Services has the final approval for roadways pursuant to the *City Streets Development Control Bylaw*, Bylaw 12513, and the *Traffic Bylaw*, Bylaw 5590.

The Board then heard from Mr. Kulchisky, a neighbouring property owner, who spoke to his frustrations with the subject site that extend beyond the issue before the Board today.

Mr. and Mrs. Weirsma made the following points in rebuttal:

1. They met with Transportation Services to discuss other options, but the cost of extending the width of the driveway on the eastern side of their property was not discussed.
2. The driveway has existed since 1991 and addresses the requirements of their business.
3. There are very few pedestrians in this area because there are no sidewalks on their side of 76 Avenue and the curbs are damaged and deteriorating.
4. It was their opinion that restoring the grassed boulevard would not be aesthetically pleasing.
5. It was their opinion that allowing the driveway to remain will not set precedence in the area because most other businesses already have extended driveways.
6. Modernizing the driveway will decrease functionality and is very expensive.

**Decision:**

that the appeal be **ALLOWED** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following changes:

The following conditions imposed on the development permit issued on April 2, 2015 are **REVOKED**:

3) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the owner must enter into a Municipal Improvement Agreement with the City for the following improvements:

- removal of the existing concrete on the City road right-of-way (boulevard) between the center and eastern access to 76 Avenue and restoration of the boulevard.

Engineering Drawings are not required for this Agreement. However, construction must meet the City of Edmonton Design and Construction Standards. The Agreement must be signed by the property owner and returned to Transportation Services to the attention of Mohammed Bashar (780-496-1799) including an irrevocable Letter of Credit in the amount of \$18,000.00 to cover 100% of construction costs. The Agreement will be forwarded directly to the owner for his signature.

and

5)The existing concrete on the City road right-of-way (boulevard) between the center and easterly access to 76 Avenue must be removed and the boulevard restored, as shown on the Enclosure.

The development is subject to the following **CONDITIONS**:

1. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of \$11,166.20. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final

applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

2. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the property owner shall enter into a Servicing Agreement to pay the following Permanent Area Contribution Assessments:

- Mill Creek/Fulton Creek Offsite Storm: \$3,737/ha

- There may also be PAC over-expenditure payment which can only be determined at the time the applicant/owner is ready to enter into a servicing agreement.

- Expansion Assessment is not applicable, since the property is outside the current Expansion Assessment area.

The PACs must be paid by entering into a servicing agreement, which will be prepared by the Sustainable Development. The applicant should immediately contact Steve Jensen at 780-944-7673 when he/she is ready to initiate the servicing agreement and make payment.

The assessment area is 1.9312 ha. The assessment area is obtained from the City's information computer program called POSSE.

The final PAC amounts will be based on the prevailing rates at the time the applicant/owner pays and enters into a servicing agreement with the City.

4. All access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction. Reference Section 53(1).
6. The existing easterly and westerly accesses from the site to 76 Avenue and existing access to 74 Avenue are acceptable and can remain. Any modification to these existing accesses requires the review and approval of Transportation Services.
7. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
8. Any hoarding or construction taking place on road right-of-way requires an OSCAM permit. The owner must call Transportation Operations at 780-442-6458 to arrange for the permit.
9. Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
10. The applicant/owner shall provide parking for People with Disabilities (a minimum of 1 space) in accordance to Section 54.1(3) and to the satisfaction of the Development Officer.
11. All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.
12. Any indoor sales, display, or office area, shall not exceed 33% of the gross floor area per tenant. [Reference Section 95(1)].
13. The development shall comply to the performance standards for the IM District in accordance to Section 57 of the Edmonton Zoning Bylaw.
14. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within the required 3.0 m yards. (Reference Section 420.4(3).)

15. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

Section 420.4(3) relaxed – Allow parking to encroach into the 3.0 metre Setback requirement abutting 76 Avenue.

**Reasons for Decision:**

The Board finds the following:

1. A General Industrial Use is a Permitted Use in the IM Medium Industrial Zone, Section 420.2(5)
2. Condition 4 of the approval requires that all access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction pursuant to Section 53 of the *Edmonton Zoning Bylaw*.
3. The Board notes that Condition 5, which requires the removal of existing concrete and the restoration of the City boulevard, does not relate to an access location or a curb crossing.
4. The Board recognizes the authority of Transportation Services pursuant to the *City Streets Development Control Bylaw*, Bylaw 12513 and the *Traffic Bylaw*, Bylaw 5590, to deal with any associated matters outside of the purview of the Board.
5. Condition 5 imposed on the approved development permit application is revoked for the following reasons:
  - a) The existing concrete boulevard has existed for many years without any known complaint or safety concerns for pedestrian or vehicular traffic in the area.
  - b) Based on the evidence provided, there are many other sites in this industrial area with similar wide concrete entrances to facilitate access and egress and the proposed development is therefore characteristic of this industrial area.
  - c) Large tractor trailer trucks access the subject site and the provision of a larger turning radius, especially for trucks accessing the site from the west will improve safety for motorists travelling along this very busy four lane collector roadway.
  - d) Transportation Services acknowledged that they were not aware that large tractor trailer trucks accessed the subject site and that a larger turning radius would be required.
  - e) The Board finds that removing the existing concrete would be problematic because trucks would have to manoeuvre through narrower access points which would result in damage to the restored landscaped boulevard and cause trucks to track mud onto the subject site and the public roadway.
6. Given the fact that Condition 5 is revoked and no physical changes will be made on the subject site, Condition 3, which requires the Appellant to enter into a Municipal Improvement Agreement for the removal of the concrete and provide an associated Letter of Credit, is no longer applicable. As such, Condition 3 is also revoked.

7. Based on the above, it is the opinion of the Board, that the proposed development, with the amended conditions, 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.

**Important Information for 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 responsibility for complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been related 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 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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

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

***Edmonton Subdivision and  
Development Appeal Board***

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**SDAB-D-15-090**

Application No. 113079430-001

An appeal to construct (1) Fascia On-premises Sign and (1) Freestanding Minor Digital On-premises Sign on Lot 1, Block 1, Plan 9520748 was **WITHDRAWN**



## **Edmonton Subdivision and Development Appeal Board**

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17437 107A Street  
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Date: May 22, 2015  
Project Number: 154362913-002  
File Number: SDAB-D-15-091

### **Notice of Decision**

This appeal dated April 8, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (Driveway extension) - existing without permits

on Plan 0723943 Blk 86 Lot 18, located at 17420 - 108 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 7, 2015. The decision of the Board was as follows:

#### **Summary of Hearing:**

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed outside of the allowable 14-day appeal period, pursuant to the requirements of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Presiding Officer referenced information contained on file that the Development Officer's refusal was issued on March 2, 2015, and the appeal was filed April 8, 2015. Also contained on file was a Canada Post delivery confirmation indicating that the notice was delivered to the Appellant's residence on March 8, 2015.

Mr. Gill told the Board that he was out of the country from February 23, 2015 to March 20, 2015 and submitted a copy of his travel itinerary, marked Exhibit "A", to support this evidence. He became aware of the decision of refusal a few days after his return, on March 22 or 23, 2015. He confirmed that the signature on the Canada Post delivery confirmation was his son's. His son did advise him during a telephone conversation while he was away that a letter had been delivered from the City of Edmonton, but there was nothing that he could do about it while he was away.

The Board Officer confirmed that the Subdivision and Development Appeal Board office was closed for the Easter statutory holiday from April 3 to April 6, 2015, but reopened on April 7, 2015.

The Development Officer did not speak to the late filing issue.

**Motion:**

That the Board not assume jurisdiction.

**Reasons for Decision:**

The Board finds the following:

1. The Appellant received notice of the refusal on March 23, 2015, and the 14-day appeal period ended on April 6, 2015.
2. The Subdivision and Development Appeal Board office was closed for the Easter statutory holiday from April 3 to April 6, 2015. Therefore the appeal period was extended to April 7, 2015, but the appeal was not filed until April 8, 2015.
3. Based on the evidence provided and pursuant to Section 686(1)(a)(i) of the *MGA*, the Board does not have jurisdiction to extend the time for filing an appeal. Having determined that the appeal was filed more than 14 days following the date on which the Appellant received notice of the decision of the Development Authority, the Board cannot take jurisdiction to hear this appeal.

**Important Information for 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.

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