

# **Edmonton Subdivision and Development Appeal Board**

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Date: November 27, 2015  
Project Number: 158117141-001  
File Number: SDAB-D-15-276

## **Notice of Decision**

This appeal dated October 25, 2015, from the decision of the Development Authority for permission to:

Construct a Commercial Use building (General Retail, Personal Service, Health Service and a Restaurant with 61.8 sq.m. of Public Space)

On Plan RN39B Blk 48 Lots 11-12, located at 11045 - 127 Street NW, was heard by the Subdivision and Development Appeal Board on November 19, 2015.

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

The subject site is zoned CB1 Low Intensity Business Zone and is within West Ingle Area Redevelopment Plan.

The development permit application was approved subject to conditions and was subsequently appealed by adjacent property owners.

Prior to the hearing the following information was provided to the Board:

- Two written submissions from Mr. Ian Sheldon dated November 11 and November 12, 2015;
- A written submission from Jendrysek Holdings Ltd. received on October 29, 2015;
- A written submission from the Development Officer dated November 9, 2015;
- An e-mail in opposition to the development from a neighbouring property owner received on October 26, 2015;
- A submission from the Respondent dated November 16, 2015; and
- A copy of the West Ingle Area Redevelopment Plan.

The Board heard from the Appellant, Mr. I. Sheldon, who provided the following information:

1. He referred to his written submission and said he was happy to see the lot developed.
2. The impact of the proposed development has been underestimated and the notification area should have been larger because of the impact on the area as a whole.
3. At present, parking is a problem on the street and the situation will only get worse with this development.
4. He suggested that residential areas that require parking permits will likely be required. In the near future.

Mr. Sheldon provided the following responses to questions:

1. His vacant lot photos were taken on a Sunday when the church service was underway.
2. The church is very busy through the week as well.
3. There is one hour parking only on the St. Albert Trail portion in the area which is already very well used.
4. Edmonton is not a walkable City.
5. As the proposed hours for the restaurant are unknown, the restaurant could very easily interfere with Church activities.
6. There is a charitable organization and a prosthetics business located next to St. Albert Trail.

The representative of Jendrysek Holdings Ltd. was unable to attend; therefore the Board relied on her written submission, a summary of which follows:

1. They own the building at 11024 – 127 Street and it is leased to Northern Alberta Prosthetic and Orthotic Services.
2. As 127 Street is a one-way Street northbound, the only parking for their patients is at the St. Albert Trail elbow and 127 Street, right across from the proposed Site.
3. The proposed development will negatively impact their limited parking.

The Board heard from Mr. P. Kowal, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. He referred the Board to his written submission.
2. The Uses are permitted but given the required parking variance the application was sent to the City of Edmonton Transportation Services Department for comment.
3. The area is residential and there will likely be a lot of walk-in customers to the restaurant.
4. Parking requirement calculations have recently been changed to space-based rather than customer number-based.

The Board heard from Ms. Amanda Gelinis of the City of Edmonton Transportation Services Department who provided the following responses to questions:

1. There had been no specific parking study done for the area.
2. She confirmed there are existing restricted parking zones in the area.

3. It is the opinion of the City of Edmonton Transportation Services Department that there is adequate street parking.
4. She confirmed there is one hour parking on the St. Albert Trail portion and there are also other one hour parking areas nearby.
5. They have required there be only one access to the proposed development from 111 Avenue. All other existing accesses will be closed.
6. There is unrestricted parking on 127 and 126 Streets and on 110 Avenue.

The Board heard from Mr. John Lindstrand representing the Respondent, Scott Builders Inc., who provided the following information:

1. He referred the Board to his written submission.
2. On three separate occasions he visited the Site, took pictures and counted parking spaces. There are 24 available spaces on St. Albert Trail.
3. The 127 Street bike lane would encourage pedestrian traffic to the Site.
4. The barrier free parking spaces near Northern Alberta Prosthetic and Orthotic Services are usually empty, as they were during his three visits to the Site.
5. The proposed Uses will be complimentary to the area.
6. The restaurant Use will likely be cafe in nature with a daytime coffee shop Use rather than a full restaurant Use, but when questioned, he later confirmed that the final restaurant Use is not known at this time.
7. There are some on-Site parking spaces provided.
8. The existing empty lot, which is often used for parking, is seldom full and most of the 127 Street businesses have their own parking for employees and customers.

Mr. Lindstrand provided the following responses to questions:

1. He confirmed that people currently using the empty lot for parking will have to find parking on the street after the site is developed or they will have to use public transportation or carpooling to come into the area.
2. The neighbourhood can handle the extra parking generated by the proposed development.
3. He suggested that restricted parking areas are an option that residents can seek from the City if lack of parking becomes an issue following the development.

In rebuttal, Mr. Sheldon made the following points:

1. Given that access to the proposed development is restricted to 111 Avenue, it will not be possible to turn off of 111 Street onto 127 Street for parking because 127 Street is one-way. Visitors will turn down 126 Street, which will become the default street for parking.
2. He confirmed that visitors would still be able to access the St. Albert Trail parking spots from 111 Avenue.

**Decision:**

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. The required number of parking spaces as required under Schedule 1(A) of Section 54.2 is relaxed from 28 to 11.

**Reasons for Decision:**

The Board finds the following:

1. The proposed developments are Permitted Uses in the CB1 Low Intensity Business Zone.
2. The Appellant indicated he was supportive of the development but did have concerns associated with parking.
3. The Development Authority, with the support of the City of Edmonton Transportation Services Department, felt there was sufficient on-street parking to accommodate the variance of 17 parking stalls.
4. The Board agrees with this conclusion. There are 24 public parking spaces on nearby St. Albert Trail. The Board accepts the evidence that parking on this street is rarely at 100% capacity. As well, there is public parking on the east side of 127 Street.
5. This is a walkable neighbourhood with high-density residential developments on 127 Street. Also, 111 Avenue is served by public transit. The Board is of the opinion that, because of these factors, many customers of the proposed developments will not use vehicles to access the site.
6. The second Appellant, Jendrysek Holdings Ltd., had a concern that spill-over parking from the proposed development would impact the barrier free parking stalls near Northern Alberta Prosthetic and Orthotic Services, which are often used by people with mobility issues. However, the Board accepts the evidence that the two barrier free stalls immediately adjacent to this property are generally available on an on-going basis.
7. The Board received no opposition from any of the other businesses on 127 Street or St. Albert Trail and nothing was received from the Community League. The Board acknowledges that one e-mail of opposition was received from a neighbouring property owner.
8. The Board finds that the proposed 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.

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**Important Information for the Applicant/Appellant**

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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*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
  - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
  4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.
  5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
  6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

Brian Gibson  
Subdivision and Development Appeal Board

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November 19, 2015

Jovnic Ltd.  
7823 – 34 Street NW  
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## **Postponement Decision**

RE: Project No. 159957147 (001 / 005 / 007 / 008 / 009 / 010) / File Nos. SDAB-D-15-236 / 237 / 238 / 239 / 240 / 241 – comply with six Orders to acquire valid development permits by September 25, 2015 or cease the Use and demolish and remove all materials by September 25, 2015; and to comply with all conditions of development permit No. 149045660-001. The subject site is located on Plan 8920191, Block 3; 13004 – 33 Street NE.

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### **Summary of Hearing:**

At the outset of the appeal hearing, the Presiding Officer advised all parties present that a Tabling request had been received from Mr. J. Murphy of Ogilvie LLP, legal counsel for the Appellant. Mr. J. Edgar of Ogilvie LLP was present to speak to this request on behalf of Mr. Murphy. He indicated that they are seeking a hearing date in mid-February, 2016.

Mr. M. Gunter, City of Edmonton Law Branch, representing the City of Edmonton Sustainable Development Department, provided his written consent to the Tabling request.

Representatives of PCL Construction Ltd., Mr. D. Murphy and Ms. C. Carr, were also present and indicated they had no objection to the tabling of this matter.

### **Decision**

SDAB-D-15-236 / 237 / 238 / 239 / 240 / 241 are TABLED to February 17, 2016, or February 18, 2016

### **Reasons for the Decision**

1. The tabling request was mutually agreed to by both the Appellant and the Respondent.
2. There was no objection from the other party in attendance.

You will be advised regarding the time and location of the hearing at a later date.

Should you require further information in this regard, please contact the Subdivision & Development Appeal Board Office at 780-496-6079.

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