

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Ryan Kroy v Development Authority of the City of Edmonton, 2019 ABESDAB 10197

Date: November 21, 2019  
Project Number: 332739324-001  
File Number: SDAB-D-19-197

Between:

Ryan Kroy

and

The City of Edmonton, Development Authority

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### Board Members

Gwen Harris, Presiding Officer  
Kathy Cherniawsky  
Alex Nagy  
Lyll Pratt  
Sara McCartney

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### DECISION

[1] On November 6, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 17, 2019 for an application by Chris Karampelas. The appeal concerned the decision of the Development Authority, issued on September 25, 2019 to approve the following development:

**To construct an Accessory building (detached Garage 8.23 metres by 6.71 metres)**

[2] The subject property is on Plan 1820248 Blk 10 Lot 3A, located at 6119 - 111 Avenue 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:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submissions;
- The Appellant's written reasons for appeal; and
- One online response.

### **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 (the "*Municipal Government Act*").

### **Summary of Hearing**

*i) Position of the Appellant, R. Kroy:*

- [7] Mr. Kroy was not in attendance and indicated in his online response that he would not be attending the hearing. Therefore, the Board proceeded on the written reasons that were provided when the appeal was filed. The reasons for appeal included the following:
- a) Building codes and city regulations need to be followed when developing infill lots.
  - b) The development of oversized garages on two neighbouring lots will greatly impact the community and surrounding properties.
  - c) Increased alley congestion could be a safety issue especially because there is no place for homeowners to move the snow.
  - d) Oversized garages will affect sight lines of surrounding neighbours.
  - e) A lack of initial planning has resulted in the need for the variances.
  - f) The need to develop oversized garages to reduce parking in the front only shifts parking issues to the back alley.
  - g) If two standard size garages were built a shed could still be constructed and storage could be utilized in the attic space of a standard size garage.

*ii) Position of the Development Officer, J. Folkman:*

- [8] Mr. Folkman did not attend the hearing but provided a written submission that was considered by the Board.

*iii) Position of the Respondent, C. Karampelas:*

- [9] Mr. Karampelas has discussed the construction of his garage with most of his neighbours in this community.
- [10] The garage complies with all of the development regulations with the exception of site coverage. The proposed garage exceeds the site coverage requirements because it is 22 feet long so that his truck can be parked inside the garage.
- [11] Street parking is not permitted in front of his house. The garage will be large enough to allow two vehicles to be parked inside as well as provide additional storage for sporting and yard maintenance equipment.
- [12] Mr. Karampelas provided the following information in response to questions from the Board:
- a) The Appellant refused to speak to him and it was his assumption that he did not understand the proposal.
  - b) The construction of the garage will likely not commence until spring, because of the recent turn in the weather.

**Decision**

- [13] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority.
- [14] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Site Coverage for an Accessory Building of 12 percent as per section 110.4.6(a) is varied to allow an excess of 2 percent, thereby increasing the maximum allowed to 14 percent.
  2. The maximum allowable Total Site Coverage of 40 percent as per section 110.4.6(a) is varied to allow an excess of 3 percent, thereby increasing the maximum allowed to 43 percent.

**Reasons for Decision**

- [15] Single Detached Housing is a Permitted Use in the (RF1) Single Detached Residential Zone. The proposed detached Garage is Accessory to a Permitted Use in this Zone.
- [16] The proposed development complies with all of the development regulations with the exception of the maximum allowable Site Coverage requirements.

- [17] The Development Authority approved the development with a variance to the maximum allowable Site Coverage for an Accessory Building, pursuant to section 110.4.6(a) of the *Edmonton Zoning Bylaw*.
- [18] Based on additional information provided by the Development Authority, a variance is also required in the maximum allowable Total Site Coverage requirements, pursuant to section 110.4.6(a) of the *Edmonton Zoning Bylaw*.
- [19] The Board grants the two required variances for the following reasons:
- a) The proposed development complies with all of the development regulations including the maximum allowable Height and the minimum required Setbacks. The variances required in the maximum allowable Total Site Coverage and the maximum allowable Site Coverage of the Accessory Building are related and minimal in this case.
  - b) Based on a review of the proposed plans, the detached garage complies with the Rear Setback requirements and is sited further into the Rear Yard which will mitigate concerns relating to the storage of snow and any safety concerns for vehicles maneuvering in the rear lane. The siting of the detached garage will have no impact on neighbouring properties.
  - c) Based on the evidence provided, parking is not permitted on the south side of 111 Avenue immediately in front of the subject site.
  - d) The proposed garage will allow two personal vehicles, including a truck to be parked inside which reduces the need for street parking and meets the property owner's need to provide additional storage for sporting and other yard maintenance equipment.
  - e) The Respondent discussed the proposed development with affected neighbours and the Board notes that the only objection received was from the Appellant.
- [20] Based on the above, it is the opinion of the Board, 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.

Gwen Harris, Presiding Officer  
Subdivision and Development Appeal Board

c.c. City of Edmonton, Development & Zoning Services, Attn: J. Folkman/A. Wen

**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.*

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Windermere Registry v Development Authority of the City of Edmonton, 2019  
ABESDAB 10190

Date: November 21, 2019  
Project Number: 292583724-001  
File Number: SDAB-D-19-190

Between:

Windermere Registry

and

The City of Edmonton, Development Authority

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Board Members

Gwen Harris, Presiding Officer  
Kathy Cherniawsky  
Alex Nagy  
Lyll Pratt  
Sara McCartney

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### DECISION

#### **October 17, 2019:**

The Subdivision and Development Appeal Board made and passed the following motion on October 17, 2019:

That the appeal hearing be scheduled for November 6, 2019, at the written request of the Appellant.

#### **Reasons For Postponement Decision #1:**

1. The Appellant is not available on October 31, 2019 due to another prescheduled meeting.
2. The Agent for Bubbles Carwash has agreed to a one week Postponement.

**November 6, 2019 Hearing:**

Motion:

“That SDAB-D-19-190 be raised from the table.”

- [1] On November 6, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 3, 2019 for an application by Axiom Architecture Inc. The appeal concerned the decision of the Development Authority, issued on September 24, 2019, to approve the following development:

Construct a two storey Rapid Drive-through Vehicle Services Use building (Bubbles Carwash)

- [2] The subject property is on Plan 1520533 Blk 3 Lot 1, located at 6231 - Andrews Loop SW, within the DC1 Direct Development Control Provision. The Ambleside Neighbourhood Structure Plan and Windermere Area Structure Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s reasons for appeal; and
- The Respondent’s written submission

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Written submission from the Appellant regarding the postponement request
- Exhibit B – Written submission from the Appellant
- Exhibit C – Letters of support submitted by the Applicant

**Preliminary Matters**

- [5] At the outset of the appeal hearing, Ms. Cherniawsky disclosed that she is an acquaintance of the Appellant’s Legal Counsel, Ms. Agrios, who has been retained by the Appellant. However, her interactions with Ms. Agrios are not related to her role on the Board and will not impact her ability to provide a fair and unbiased hearing. No one objected 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 (the “*Municipal Government Act*”).

**Summary of Hearing – Postponement Request #2***i) Position of the Appellant, S. Mather and Dr. J. Mather:*

- [8] A written submission outlining the postponement request was provided and marked Exhibit A. The postponement is required in order to have legal representation. Mr. Mather was unable to communicate with his father and business partner who was travelling in Europe until he returned to Edmonton on the weekend of October 19, 2019. Upon his return, they discussed the appeal and the fact that the developer had engaged Legal Counsel to act on its behalf at the hearing. They then subsequently met with their other business partner the following week and the decision was made to retain legal Counsel.
- [9] Ms. Agrios was away from her office until late last week when it was confirmed that she would act on their behalf. However, she was not available to attend the hearing today and an email was sent to the SDAB office on November 1, 2019 to request that the hearing be postponed until November 20, 27, or 28, 2019 to accommodate her schedule.
- [10] It was his opinion that this was not a commercially unreasonable period of time. However, if the adjournment is denied he asked that their objection be recorded and that it be noted that they will proceed with their arguments but without prejudice to the right to seek permission to appeal the decision to deny the adjournment.
- [11] It is their right to have legal representation in the same way as Bubbles Carwash.
- [12] Mr. Mather provided the following responses to questions:
- a) The first postponement was requested because the appeal date conflicted with a previously scheduled meeting.
  - b) Following the first postponement, they were advised that Bubbles Carwash had retained Legal Counsel and that triggered their decision to also seek Legal Counsel.
  - c) The first request to postpone was made as soon as he was advised of the date of the hearing and realized that it conflicted with an already scheduled meeting.
  - d) This is not an attempt to intentionally delay the proposed development.
  - e) He was notified that Bubbles Carwash had retained Legal Counsel on October 17, 2019. However, his father was out of the country and discussions had to occur with other shareholders.

*ii) Position of the Development Officer, P. Adams:*

- [13] Mr. Adams was not in attendance but provided a written response which indicated that he did not object to the postponement request.

iii) *Position of the Bubbles Carwash, represented by J. Murphy, representing Ogilvie LLP:*

- [14] Bubbles Carwash is opposed to the request for a postponement of this hearing.
- [15] The approved development permit is suspended until the Board renders a written decision which means no ground work or servicing can be done on the site. Every day that passes makes it more difficult because of the potential delays posed by the weather at this time of the year. The request, if granted, may push the development into the next construction season.
- [16] Even if the hearing can be scheduled within the next two weeks, the written decision of the Board is not issued for 15 days following the hearing.
- [17] He consented to the first postponement request because of the practice of the Board to grant parties a one-time adjournment.
- [18] It is somewhat disingenuous for the Appellant to say that he was not aware that he had been retained by Bubbles Carwash because it was noted on all of the correspondence sent by the Board. Specifically, both the original hearing notice dated October 11, 2019 and the postponement decision dated October 17, 2019 identified Counsel.
- [19] Bubbles Carwash also met with the Appellant after the original hearing was postponed and they referenced the fact that legal Counsel had been retained.
- [20] It was acknowledged that it is difficult for the Board to assess the balance of fairness when considering this request. However, the *Edmonton Zoning Bylaw* clearly pushes the balance of power in one direction by suspending the approved development permit. This means that nothing can happen on the subject site until the development permit is issued.
- [21] It was his opinion that the permit holder is prejudiced the most in this case because the Appellant had the opportunity to retain legal Counsel as soon as the appeal was filed.
- [22] If someone is going to engage in a process that has the immediate effect of suspending a development permit at this time of the year, then that process should be engaged on a ready to go forward basis and that has not happened.
- [23] It is unfortunate that the Appellant put off the matter of engaging Legal Counsel for so long but his client cannot support this postponement request.
- [24] He received a copy of the email request for a postponement of the hearing on Monday, November 4, 2019. The email read:

Hi. I discussed the SDAB meeting with my business partners As Bubbles has decided to engage legal Counsel at the SDAB meeting, we would like to have the opportunity to do so as well. It is quite intimidating to have legal Counsel at the meeting, so we feel that it would be fair to have the same opportunity. Can we please discuss the rescheduling of the SDAB meeting to allow for a reasonable

amount of time to engage legal Counsel to review the file and represent our group at the SDAB meeting? You can reach me on the phone number below to discuss.

[25] The balance in this case in terms of prejudice and fairness favours the permit holders and the hearing should proceed today.

[26] Mr. Murphy provided the following information in response to questions from the Board:

- a) It was clarified that the notification of appeal period ended on October 22, 2019. The developer had the opportunity to sign a waiver and proceed but as soon as the appeal was filed that was no longer an option.
- b) If the Board does not grant the postponement, the Appellant can appeal that decision to the Court of Appeal. However, even if they agree to the postponement and wait two more weeks for the hearing and an additional two weeks to receive the written decision, the Appellant can still file an appeal with the Court of Appeal.
- c) It was his opinion that the reasons for filing the appeal have little to do with Windermere Registry and that if the Appellant is not successful, that decision will be appealed to the Court of Appeal anyway. Therefore, the threat of an appeal if the adjournment is not granted should not influence the decision because that threat does not come with a reciprocal promise not to seek leave to appeal.

*iv) Rebuttal of the Appellant:*

[27] Mr. Mather is not experienced about this process so the fact that Ogilvie Law was copied on the correspondence was not apparent to him. He was advised during a telephone conversation with the SDAB office on or around October 17, 2019 that Bubbles Carwash had retained legal Counsel and that is when he became aware.

#### **Decision – Postponement Request #2:**

[28] The request to postpone the hearing is DENIED.

#### **Reasons for Decision – Postponement Request #2:**

[29] The Board considered the following factors in making a determination about adjourning the hearing of this appeal.

[30] The Board must balance fairness for all parties.

[31] The *Municipal Government Act* and the *Edmonton Zoning Bylaw* balance interests of certainty and fairness for all the affected parties. To this end, the laws provide for the automatic suspension of a development permit in the event it is appealed, but also provide for a timely determination of the appeal. Given that the appeal effectively prevents the holder of an approved permit from proceeding, the *Act* imposes tight time

limits, including a 21 day appeal window, the requirement that the Board hold a hearing within 30 days of receipt of a notice of appeal, and that it give its decision in writing together with reasons for the decision within 15 days after concluding the hearing.

- [32] The proposed development was approved on September 24, 2019.
- [33] The appeal was filed for the Appellant, a registered Business Corporation, by one of its owners on October 3, 2019. This appeal suspended the permit and stopped all work on the project. The Board notes that the Appellant's representative, Mr. Mather, is the legal owner or part owner of several commercial properties, including Windermere Registry, within the notification area. The Appellant's agents could have engaged legal Counsel at any time in furtherance of this appeal.
- [34] The hearing was originally scheduled for October 31, 2019. The Appellant subsequently submitted the first request to postpone the hearing to November 1, 4, 6, 7, 8, 12, 14 or 15, 2019 on October 15, 2019.
- [35] Counsel for Bubbles Carwash consented to the Appellant's first request agreeing to a one week postponement of the hearing.
- [36] On October 17, 2019, the Board postponed the hearing to November 6, 2019 in keeping with its general practice. The Board copied the Development Authority, Counsel for the Bubbles Carwash and the Appellant's agent of this decision.
- [37] The Appellant's agent had direct contact with the owners of Bubbles Carwash subsequent to the first postponement decision.
- [38] Based on a review of the emails and correspondence that was provided to both parties, the Board finds it was evident the Appellant would have had written notice by October 11, 2019, that Bubbles Carwash had retained Ogilvie LLP as Legal Counsel. The Board is of the view that at that date, the Appellant had the additional information (that Bubbles Carwash had retained legal representation) it claimed was needed to make a decision on whether or not it needed legal Counsel to pursue its appeal.
- [39] The Appellant's request for a further postponement of the hearing was not received by Counsel for Bubbles Carwash until November 4, 2019.
- [40] Counsel for Bubbles Carwash opposes the request for a further adjournment on the basis that further delay at this time of year may push the approved development over to the next construction season. In their view, the Appellant is not prejudiced as it can appeal the Board's ruling if the adjournment is not granted.

- [41] The Board acknowledges the Appellant's objection to the Board proceeding today without its Legal Counsel present. However, inasmuch as the Appellant had notice as of October 11, 2019 that Bubbles Carwash had retained Legal Counsel and that at the time of the first adjournment request the Appellant agreed to the rescheduling of the hearing to November 6, 2019, the Board is of the view that the Appellant had sufficient opportunity to determine the resources needed to proceed on the scheduled date.
- [42] Given these circumstances, the Board is satisfied based on the evidence before it that on balance, there is greater prejudice to Bubbles Carwash from further delay of the appeal than to the Appellant.
- [43] Based on all of the above, the Appellant's request to postpone the hearing for a second time is denied.

### **Summary of Hearing**

- [44] The Presiding Officer reminded the parties of Section 685(4)(b) of the *Municipal Government Act* that states:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district 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.

*i) Position of the Appellant, S. Mather:*

- [45] Mr. Mather reiterated, based on the advice of his lawyer that he is proceeding without prejudice to his right to seek permission to appeal the decision to deny the adjournment.
- [46] He referenced an aerial map to identify the properties owned by the Appellant group. In addition to the named Appellant, the ownership group owns the bottle depot, a wand wash carwash and the building that houses the named Appellant, a vehicle registry office. All are located across the street from the subject site.
- [47] While they are supportive of the proposed development use, they do not support the required parking variance or the intensity of the use on such a small parcel of land.
- [48] A written submission was provided and marked Exhibit B.
- [49] The subject site is zoned DC1 and therefore the Development Officer must comply with the bylaw regulations contained in the DC1.
- [50] The DC1 bylaw specifically states that parking shall be provided in accordance with section 54 of the *Edmonton Zoning Bylaw*. It references section 54.1(2)(g) stating that

“the Development Officer may use the variance power to relax the parking requirements only in cases where the nature of the Use, the size of the Site, or other physical constraints result in a situation where the requirements cannot be met on-site without unnecessary hardship or practical difficulties”.

[51] This is a new development on a greenfield site so there is no hardship. The site can be designed to accommodate the required parking. Therefore any hardship is of the developer’s own making because a development that complied with the parking requirements could have been designed.

[52] As such the Development Officer erred by granting a variance without evidence of hardship.

[53] A Traffic Impact Assessment study was not completed and provided to the Development Officer. It was noted that the Respondent did upload a Traffic Impact Assessment to the SDAB electronic appeal file but it was completed after the development permit was issued so the Development Officer did not rely on that information.

[54] Mr. Mather provided the following information in response to questions from the Board:

a) In order to receive a variance, hardship has to be demonstrated and in this case there was no demonstration of hardship. This is a vacant site so any hardship is of the developer’s own design. The site can be designed in such a way as to not create a hardship.

b) The hardship or practical difficulty has to relate to the physical characteristics of the site. There has to be something about the site that makes the variance necessary. In this case, the variance is caused solely by the decision of Bubbles Carwash to develop a large building with less/not enough onsite parking. This is not a hardship or practical difficulty but an intentional choice because the site is vacant. If Council had intended carwashes to have a lesser parking requirement, it would have been reflected in the DC1 Bylaw.

c) Regardless of whether or not a Traffic Impact Assessment was provided, the Development Officer is not permitted to grant variances unless hardship is demonstrated and there was no demonstration of hardship in this case. Even if the Traffic Impact Assessment did demonstrate hardship, it was not considered by the Development Officer during the review.

d) He acknowledged that his original submission focused on parking issues but today he chose to limit his comments to the parking requirements of the DC1 Bylaw and the fact that the Development Officer misinterpreted section 54 and erred in granting a variance.

e) He disagreed with the findings of the Development Officer and the Traffic Impact Assessment that the majority of the parking is located inside the building based on his own experience operating a carwash and detail centre.

ii) *Position of the Development Officer, P. Adams:*

[55] Mr. Adams did not attend the hearing but provided a written submission that was considered by the Board.

iii) *Position of the Bubbles Carwash, represented by J. Murphy, representing Ogilvie LLP*

[56] The Development Officer followed the direction of Council because the parking calculations contained in section 54 create a hardship. The parking requirements contained in this section are not broken down for this type of development. Therefore, it falls under the general grouping of other Uses not specifically mentioned. This means that the parking requirements applied to this development are the same as those applied to a Shoppers Drug Mart, Best Buy Electronics, Safeway and many other parking intense Uses. This goes to the nature of the Use and the nature of this Use is that it does not generate the need for a lot of parking based on square footage in the same way as its companions in the general grouping. For a carwash, the inside square footage does not generate the same need for parking because the vehicles are accommodated inside the building.

[57] Customers do not come to park at a carwash. They come to have their cars washed and then they leave.

[58] The specific hardship as identified by the Development Officer arises out of the nature of the Use and the nature of the facility in that the square footage on which parking requirements are based does not generate the need for parking. Hardship is created because this Use is lumped in with other Uses that do generate the need for parking. This Use is unique.

[59] It was his opinion that this situation is what the Bylaw addresses as hardship whether under section 11 or section 54 of the *Edmonton Zoning Bylaw*. It is a hardship to have to provide parking spaces for square footage that does not generate a need for parking.

[60] The Development Officer used section 54.1(2)(g) of the *Edmonton Zoning Bylaw* to find the power to vary. The DC1 Bylaw says that parking shall be provided in accordance with section 54. It does not say that parking shall be provided in accordance with only section 54.2. It refers to all of section 54 which includes section 54.1(2)(g) which the Development Officer used to grant a more than reasonable variance.

[61] Section 54.1(2)(g) states that:

The Development Officer may use their variance power to relax the vehicular parking requirements in Schedule 1, the Bicycle Parking requirements in Schedule 2 and the loading requirements in Schedule 3, however such a variance shall only be considered in cases where the nature of the Use, the size of the Site, or other physical constraints result in a situation where the requirements cannot be met on-site without unnecessary hardship or practical difficulties.

- [62] In this case, the hardship and practical difficulty results from the necessity to provide useless parking spaces for a business that does not generate the need for parking. By reducing the number of parking spaces, more than the required number of queuing spaces can be provided. In this case, five queuing spaces are required while nine are being provided to deal with any queuing issues that may arise.
- [63] By using this section, the Development Officer is following the directions of Council. The Development Officer acknowledged in his written submission that 56 parking spaces are required and 26 parking spaces are proposed. This is also reflected on the stamped approved plans.
- [64] Transportation Services supported a deficiency of at least 35 parking spaces given the nature of the proposed use.
- [65] This development is located in Area C. The DC Bylaw in section 5(c) states that “parking shall be provided in accordance with section 54 of the Zoning Bylaw or in accordance with subsection 5.c.ii”. Section 5.c.ii states that “any development permit application proposing a reduction in off-street parking in Area ‘D’ that includes General Industrial Uses, shall include a Parking Impact Assessment”.
- [66] A Parking Impact Assessment is required if the site is located in Area D but not for a site located in Area C.
- [67] However, the developer decided to commission a Parking Impact Assessment after the appeal was filed. The Development Officer did not see the report but if the Board should decide that the Development Officer did not follow the directions of Council the information may be helpful in its decision making process. The findings of the Parking Impact Assessment support the findings of the Development Officer that there is an adequate amount of parking and that the variance is reasonable and justified.
- [68] Whether the Development Officer used the variance power provided in section 54.1(2)(g) or the regular variance power in section 11, the issue of hardship comes into play and the interesting phrase used in section 54.1(2)(g) is that it is not just hardship, it is hardship or practical difficulties. The practical difficulty in this case is that it is impractical to develop parking spaces for square footage that does not generate the need for parking. The Development Officer recognized this and the Parking Impact Assessment confirms that it is not necessary.
- [69] Customers at a Bubbles Carwash come and go as quickly as possible. It is not the same as what happens at a wand wash where customers come out of the building and stay on site to dry their car and polish the wheels. More than the required number of queuing spaces will be provided on site.
- [70] The Development Officer followed the direction of Council and the approved development is appropriate for this site. It will not impact the use, enjoyment or value of neighbouring properties. Two letters of support were submitted from owners of an adjacent development, marked Exhibit C.

[71] Mr. Murphy provided the following information in response to questions from the Board:

- a) The maximum allowable FAR for this site is 1.5 and the proposed FAR is only 0.55. The proposed building is only 24,000 square feet while it could be 65,000 square feet in size. It was recognized that the site can be used to queue vehicles.
- b) Schedule 1 is written so that some Uses have their own parking requirements. Other Uses fall in the general category which includes Uses that generate the need for parking based on the fact that the square footage of the Use generates parking such as a grocery store. The special nature of the proposed Use should not be included because the square footage of the building does not generate the need for parking.
- c) A variance shall be considered in cases where the nature of the Use results in a situation where the requirements cannot be met without unnecessary hardship or practical difficulty. Complying with the parking requirements results in a terrible difficulty because it will require the development of parking spaces that will not be used and takes up space on the site that can be used for queuing spaces.
- d) A vacant site can have a hardship. A practical difficulty or hardship can be encountered when trying to develop a practical use if compliance with specific requirements that were not designed specifically for that use impedes your ability to develop the site practically.
- e) Every drive through car wash will have the same problem which the Development Officer identified. That is, that the square footage of the actual carwash building does not generate the need for parking in the amounts identified in the Schedule.
- f) Other than for employees, little parking is required. A Use that does not have a special category and does not generate the need for parking creates a practical difficulty. The difficulty is in the nature of the Use.
- g) This is a unique Use that does not fit into the requirements of Schedule 1.
- h) The proposed second floor of the building is the detail centre. If the second floor were removed, the need for parking has not been reduced because customers are not there to park.
- i) The Parking Impact Assessment was not requested or required by Development Officer. It was prepared for the appeal.

v) *Rebuttal of the Appellant:*

[72] Based on his experience in operating both a carwash and detail centre, parking is required because customers chose to do some of the work themselves to reduce the cost of the package. This work is done in the parking spaces on site. Staff parking is required as well as parking for customers being picked up or dropped off.

- [73] Customers and staff from adjacent buildings that have less than adequate parking are constantly parking in their parking spaces. Designated signage has been posted but it is a real problem in the area.
- [74] They complied with the parking requirements of the DC Zone when the bottle depot, carwash and registry buildings were developed and their parking spaces are well used by their employees and customers. City Council established the parking requirements for a reason and they should be followed.
- [75] The queue into a carwash is a constantly moving piece of real estate and cannot be considered as a trade-off for parking spaces that are required for employees and customers.
- [76] The Development Officer did not mention hardship and therefore erred. The Parking Impact Assessment was not seen by the Development Officer and the information was therefore not factored into his decision.
- [77] This development is new uncharted territory because it is the first two storey carwash in Edmonton and possibly North America.
- [78] Council would have established different parking requirements if it was determined that a carwash was a unique use.
- [79] Mr. Mather provided the following information in response to questions from the Board:
- a) The number of parking spaces provided for the carwash and registry office could not be confirmed.
  - b) The Appellant is the registry office, bottle depot and carwash.
  - c) The registry office complied with the parking requirements for a traffic oriented business which has one of the highest ratios in the city.
  - d) He assumed that their carwash was approved in the same Use class but he did not know which Zone it was exactly located in.
  - e) They complied with the parking requirements for all three of the sites that they developed. The bottle depot and the carwash are on the same title and the registry office is on a separate title.
- vi) *Mr. Murphy:*
- [80] They are not asking for zero parking. Sufficient parking will be provided.
- [81] The nature of the proposed Use is different from a wand carwash. This is not a destination. The nature of the Use is not specifically the Use class because it is modified by the “nature of” which is important.

vii) *Mr. Mather:*

- [82] They were aware that Bubbles would be developing on this site when they purchased their properties. Their concern is the provision of sufficient parking. Based on firsthand experience, a carwash and detail centre requires onsite parking. The nature of the Use is not different in this case and that is why the parking regulations have been established by Council and the *Edmonton Zoning Bylaw*.
- [83] The variance that has been granted will result in employees and customers parking in their parking spaces which will result in a hardship for their businesses.

### **Decision**

- [84] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for and approved by the Development Authority.
- [85] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required number of Parking Spaces of 56 as per Section 54.2, Schedule 1(A)(12) is varied to allow a deficiency of 30, thereby decreasing the minimum required to 26 Parking Spaces.

### **Reasons for Decision**

- [86] This is an appeal of the Development Authority's decision approving a Development Permit application to construct a two storey Rapid Drive-through Vehicle Services Use building (Bubbles Carwash) in the DC1 Direct Development Control Provision (Bylaw 17494 — Area C) (the "DC1 Zone"). As per section 3.3 Area C (p), Rapid Drive-through Vehicle Services is a listed Use in this portion of the DC1 Zone.
- [87] The Development Officer approved the application and allowed a variance in the minimum required number of parking spots for this development.
- [88] Section 685(4) of the *Municipal Government Act* states:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(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.

- [89] Accordingly, the Board does not have the authority to reconsider the decision of the Development Officer unless it determines that he did not follow the directions of Council.
- [90] The Appellant argued that the Development Officer failed to follow the directions of Council as he misinterpreted the scope of his authority to vary the required parking spaces under the Bylaw by granting a variance without evidence of hardship. It is the Appellant's position that as the proposed development is a new development on a greenfield site there is no hardship because a carwash that complies with the parking requirement can be designed for the subject Site.
- [91] Counsel for Bubbles Carwash argued that the Development Officer correctly interpreted the Bylaw and exercised his discretion to vary the required number of parking spaces in accordance with the directions of Council. Counsel submitted that the Development Officer recognized that the nature of the proposed Use creates hardship or practical difficulties in complying with the generally applicable schedule of parking requirements.
- [92] The Development Officer did not appear; however, he provided a written submission and accompanying reports which the Board has reviewed in detail.
- [93] In consideration of the parties' submissions and the Bylaw, the Board finds that the Development Authority followed the directions of Council for the following reasons.
- [94] Parking is addressed in Section DC1.5.c.i which states:
- Parking shall be provided in accordance with section 54 of the Zoning Bylaw or in accordance with subsection 5.c.ii.
- [95] Section 54.1(2)(g) of the *Edmonton Zoning Bylaw* states:
- The Development Officer may use their variance power to relax the vehicular parking requirements in Schedule 1, the Bicycle Parking requirements in Schedule 2 and the loading requirements in Schedule 3, however such a variance shall only be considered in cases where the nature of the Use, the size of the Site, or other physical constraints result in a situation where the requirements cannot be met on-site without unnecessary hardship or practical difficulties.
- [96] As the proposed development is within Area C of DC1, the Board finds that the Development Officer correctly concluded that a Parking Impact Assessment was not required.
- [97] As there are no parking requirements specific to Rapid Drive-through Vehicle Services Use in the *Edmonton Zoning Bylaw*, the Board finds that the Development Officer followed the directions of Council in using section 54.2, Schedule 1(A)(12) to determine the parking space requirement.
- [98] In the Board's view, the Development Officer also followed the directions of Council in considering the nature of the Use (Rapid Drive-through Vehicle Services), the size of the

Site, or other physical constraints result in a situation where the requirements cannot be met on-site without unnecessary hardship or practical difficulties as required per section 54.1(2)(g).

- [99] The Board agrees with Counsel for Bubbles Carwash that there is a hardship or practical difficulty associated with the nature of the proposed Use, even on a greenfield site, because the generally applicable formula to determine the minimum number of required parking spaces is based on the premise that additional square footage is associated with a commensurate increased need for parking spaces. However, based on the evidence before the Board for the reasons identified by the Development Officer, this premise does not hold true for Rapid Drive-through Vehicle Services such as the proposed development.
- [100] The Development Officer specifically considered the application of the generally applicable development regulation given the nature of this type of Use and noted the practical difficulty to meeting generic parking space requirements when additional square footage provides space for vehicles within the building and does not generate a need for additional parking spaces typically associated with other types of commercial uses:

A Rapid Drive-through Vehicle Service is a Commercial Use (Section 7.4(44)). As there is no specific parking requirements for this Use Class in the Edmonton Zoning Bylaw the Development Officer must use Section 54 Schedule 1(A)(12) to determine the parking requirement. This parking requirement, 1 parking space per 40m<sup>2</sup> of Floor Area, is a general requirement for all Commercial uses which do not have a specifically stated parking requirement in Section 54 and requires that the Development Officer calculate the entire interior Floor Area of the building at the same amount as other Commercial Uses such as General Retail Stores.

A large portion of the interior space is dedicated to vehicle work areas, turnarounds, and mechanical rooms which do not necessarily increase the parking requirement. In this case large portions of the floor area will be dedicated to bulky vehicles and maneuvering which do not have the same density of patrons as other Commercial Uses in the Development Officer's opinion. The space allocated to the uses within the building are approximately:

- 1609m<sup>2</sup> for the vehicles and work done on them (40.25 parking spaces as per the requirement)
- 298m<sup>2</sup> (7.45 parking spaces) for the offices and staff areas
- 148m<sup>2</sup> (3.70 parking spaces) for the Customer waiting area
- 162m<sup>2</sup> (4.05 parking spaces) for the mechanical rooms and storage.

Considering this it was the Development Officers opinion that 26 parking spaces would be sufficient to meet the demand of the Site. The parking requirement for the customer waiting area and the offices and areas for staff is ~11 parking spaces, much less than the required 56 parking spaces. The vehicle washing and detailing areas will not, in the Development Officer's opinion, require the same

amount of parking as a General Retail Store or similar use and a parking variance is appropriate.

The Rapid Drive-through Vehicle Service has a requirement of five in-bound queuing spaces (Section 72(5)(b)(i)(A)&(B)). The applicant provided 9 queuing spaces leading into the 3 interior staging bays and then the tunnel wash bay, exceeding the required in-bound queuing spaces. The 11 detailing spaces on the second floor provide ample spaces to complete the detailing and washing of the vehicles within the foot print of the building. As per the letter addressed to the previous Development Officer the process of washing and detailing the vehicles is completed by trained staff and integrated in one process leading from the initial 9 queuing spaces. In the Development Officers opinion based on the requirement of only 5 queuing spaces, and the applicant's supplied information, the operations of the Rapid Drive-through Service will be met by the site.

Based on the applicant's Letter describing the Use of the Site the direct use of the queuing spaces and interior facilities will be the principal location of activity on the Site. The customers are expected to drop off the vehicles and pick it up directly from the staff of the business. The Development Officer believes that this operation will limit the need for parking on the Site as the vehicles will be using the operational facilities rather than the parking spaces while the owners are on site. After the vehicles are cleaned the owners will take the vehicles and likely leave. However they may utilize the parking spaces for some time after the operation of the facility, but the Development Officer did not believe this would be a long period as there are no other businesses to visit on the Site and the customer would have little reason to continue their visit to the carwash for any lengthy period of time.

- [101] The Board finds that the hardship or practical difficulty associated with the nature of this Use is also demonstrated by the fact that the maximum allowed Floor Area Ratio (FAR) for the subject Site is 1.5 and, while the proposed development has a FAR of 0.55 (approximately one-third of the allowable maximum), it nonetheless requires a substantial variance according to the generally applicable formula for required parking spaces.
- [102] Finally, the Board notes that it considered that the Development Officer acknowledged that an error was made on the approved development permit - 26 parking spaces are proposed and a total of 56 parking spaces are required (not 35 as indicated on the approved development permit). However, the deficiency of 30 parking spaces was still supported as the original Transportation response noted a variance of 30 spaces was considered. Based on the explanation in the written report, the Board finds the misstatement in the issued permit of the total required parking spaces is a non-material error.

[103] For the above reasons, the Board finds that the Development Officer did follow the direction of Council by exercising the variance power provided in section 54.1(2)(g) of the *Edmonton Zoning Bylaw*. Therefore, the appeal is denied and the development is granted.

Gwen Harris, Presiding Officer  
Subdivision and Development Appeal Board

c.c. City of Edmonton, Development & Zoning Services, Attn: P. Adams/H. Luke

**Important Information for the Applicant/Appellant**

7. 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.
8. Obtaining a Development Permit does not relieve you from complying with:
  - f) 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,
  - g) the requirements of the *Alberta Safety Codes Act*,
  - h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - i) the requirements of any other appropriate federal, provincial or municipal legislation,
  - j) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
9. 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.
10. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
11. 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.
12. 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.*