

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: November 5, 2015
Project Number: 172560246-001
File Number: SDAB-D-15-211

Notice of Decision

This appeal dated August 21, 2015, from the decision of the Development Authority for permission to:

Change the Use from Professional, Financial, and Office Support Services to General Retail Stores (main floor) and Health Services (second floor), and construct additions, interior alterations, and exterior alterations

on Plan 2531AB Blk 4 Lot 10, located at 12407 - 112 Avenue NW, was heard by the Subdivision and Development Appeal Board on October 29, 2015.

September 17, 2015 Hearing:

MOTION:

“That the appeal hearing be TABLED to Thursday, October 29, 2015.”

October 29, 2015 Hearing:

MOTION:

“That SDAB-D-15-2015 be raised from the table.

Summary of Hearing:

At the outset of the appeal hearing, Mr. Wachowicz and Mr. Kindrake disclosed that they practised law with Ms. Belzil, Legal Counsel for the Appellant, over 13 years ago. Mr. Young disclosed that he was the head of the Litigation Section of the City of Edmonton until June of 2013 and that Mr. Gunther, who was appearing on behalf of the Law Branch for the City of Edmonton, worked under him at that time. None of these Board members felt this would hinder their ability to provide a fair and unbiased hearing. 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 of the decision of the Development Authority to refuse an application to change the Use from Professional, Financial, and Office Support Services to General Retail Stores (main floor) and Health Services (second floor), and construct additions, interior alterations, and exterior alterations located at 12407 – 112 Avenue NW. The subject site is zoned CB1 Low Intensity Business Zone and is located within the West Ingle Area Redevelopment Plan.

The development permit application was refused due to a deficiency in the number of required parking spaces and a deficiency in the minimum Setback requirement.

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

- A written submission from the Development Officer received on September 10, 2015
- A written submission from Legal Counsel for the Appellant dated October 26, 2015
- A letter of support from the Inglewood Business Association dated September 2, 2015
- A revised set of drawings submitted by the Appellant on September 16, 2015
- Two letters of opposition from affected property owners
- An online response from an affected property owner in opposition to the proposed development
- Seven letters of support from various agencies and organizations
- Bigstone Professional Centre Parking Survey conducted by Bunt & Associates (“Bunt & Associates Parking Survey”)
- Justification for the required parking variance received from Becker, Elzein & Associates Ltd. Professional Engineers dated July 22, 2015
- A copy of the West Ingle Area Redevelopment Plan

The Board heard from Ms. Belzil, Legal Counsel for the Appellant, Bigstone Health Commission. Ms. Belzil referenced her written submission and provided the following submissions:

1. The proposed development will change the existing Use of Professional, Financial and Office Support Services to a Medical Clinic and Retail Outlet (a pharmacy).
2. Two doctors and two dentists will practise on the second floor and the proposed Pharmacy will be on the main floor.
3. The development will employ 13 staff members.
4. It is estimated there will be a total of 10 to 12 patients on-site at one time.
5. The building will be owner occupied with no sub-tenants.
6. The proposed use will be split evenly between the Pharmacy and the Health Clinic.
7. Ms. Belzil submitted nine photographs, marked Exhibit “A”. They included a satellite photograph of the subject building and the surrounding neighbourhood, including the Inglewood Dental Clinic located across 124 Street from the subject site, the low rise apartment buildings along 124 Street, and the main commercial arteries of 124 Street and 118 Avenue, views from their site down 124 Street and across 112 Avenue, and photographs of the Condominium building and Hair Salon located north of 112 Avenue.
8. Parking on 124 Street is free, but it is restricted during peak hours.
9. It is anticipated that patient turnover will be less than two hours.

10. There are no parking restrictions on 112 Avenue.
11. The West Ingle Area Redevelopment Plan was adopted in 1985. Ms. Belzil referenced a map that was updated in 2000 to illustrate the commercial strip along 124 Street. Ms. Belzil noted there is very little commercial development surrounding the subject site, which reduces the competition for parking in the area.
12. Ms. Belzil referenced page 53 of the Area Redevelopment Plan, which recognizes that the commercial strip that does not extend north of 111 Avenue, except for existing commercial development which includes the subject site.
13. Ms. Belzil noted that this has not changed since the Area Redevelopment Plan was originally adopted.
14. The Inglewood Dental Clinic and other commercial developments in the area provide their own parking.
15. A map showing the zoning of the area indicates that the CB1 Zone is small and is surrounded by residential properties.
16. There are three businesses and walk-up apartment buildings located in the CB1 Zone that would require public parking.
17. The subject building has been vacant for at least five years.
18. Ms. Belzil referenced Appendix A of her written submission to provide a history of development on this site, and to illustrate that every development permit application for this site since 1979 has required a parking variance.
19. Five on-site parking spaces have never been adequate to support the uses of this building.
20. Ms. Belzil referenced the “Broken Windows” theory, which posits that occupied buildings have a positive impact on the community, whereas vacant buildings do not contribute to the tax base, are a detriment to the community, and lead to crime and graffiti.
21. Ms. Belzil argued that the proposed development is a better alternative to leaving the building vacant and that it will enhance the commercial strip the City wants to maintain.
22. The proposed Health Clinic will be used by Bigstone band members, other Aboriginal groups, residents of the community, and seniors.
23. Bigstone Health Commission has a contract with the Federal Government to provide medical and dental services.
24. Two shuttle vans collect patients from northern Alberta and transport them to Edmonton. Other shuttle vans shuttle patients to their appointments within the city.
25. As a result, most of the individuals visiting the building will not use private vehicles.
26. Although the Development Authority expressed concern about what might occur should the building be sold, the building is small and it is unlikely that a change in use will have a negative impact on the community.
27. Approximately one million dollars has been invested in the site and Bigstone Health Commission has no plans to sell the property.
28. This neighbourhood has the highest concentration of Aboriginal people in Edmonton, and the proposed Health Clinic will provide services to these residents.
29. There is also a high concentration of seniors in this neighbourhood who will also benefit from the proposed services.
30. The nearest medical facility or pharmacy is located on 111 Avenue and 130 Street.
31. A map marked Exhibit “B” was submitted to illustrate where members of the Bigstone Cree Nation currently reside in this neighbourhood.

32. The Inglewood neighbourhood has an 11 percent Aboriginal population compared to five percent for the entire City.
33. The Prince Charles neighbourhood has a 13 percent Aboriginal population.
34. Sixty percent of the households in this community have an annual income of less than \$50,000.
35. There are currently no medical clinics in the Inglewood neighbourhood and only two small pharmacies.
36. Five on-site parking spaces are available at the rear of the building and these could be converted to tandem spaces to provide 10 on-site parking spaces.
37. Ms. Belzil referenced the Bunt & Associates Parking Survey. She noted that the requirement to provide 43 parking spaces was calculated based on the inclusion of the square footage of the basement. However, the basement will only be used for storage, which will reduce the parking requirement by one third, reducing the number of required parking spaces from 43 to 33 spaces.
38. Ms. Belzil referenced the Bunt & Associates Parking Space Inventory and noted that on 112 Avenue and 124 Street there are 55 parking spaces available on these streets, which are all free public parking spaces.
39. There are no other commercial developments in this area that will be competing for those parking spaces.
40. According to the Bunt & Associates Parking Survey, the parking on these streets is underused.
41. In addition, the subject site is in close proximity to major public transit routes.
42. The Bunt & Associates Parking Survey shows that the parking spaces located on 112 Avenue and 124 Street, in close proximity to the subject site, are never fully occupied.
43. In particular, there are very few cars parked on 124 Street during the course of a day.
44. Ms. Belzil referenced the Executive Summary of the Bunt & Associates Parking Survey, which concluded that the parking demands along 124 Street between 111 Avenue and 113 Avenue are low with less than 30 percent usage during peak hours, and an average duration of one to three hours.
45. Occupancy rates along 112 Avenue between 123 Street and 125 Street ranged from 58 to 80 percent during peak hours, with an average duration of two to four hours.
46. Occupancy on 123 Street and 125 Street generally ranged from 33 to 59 percent, with an average duration of two to five hours.
47. The occupancy rate along 113 Avenue between 123 and 125 Streets ranged from 25 to 80 percent during peak periods, with an average duration of two to six hours.
48. The proximity of 112 Avenue and 124 Street generally suggests these will be preferred off-site parking areas for the proposed development.
49. Parking spaces on 112 Avenue and 124 Street are anticipated to accommodate spikes in parking demand. Parking is anticipated to be short term with a high turnover rate, which will complement the parking characteristics along 124 Street north of 111 Avenue.
50. The findings of the Bunt & Associates Parking Survey do not support the Development Authority's concerns that there will be a parking spill over into residential areas.
51. Ms. Belzil referenced letters of support that were received from numerous groups and agencies, including the Inglewood Business Association, Seniors Outreach Network Society, Sturgeon Lake Cree Nation, and the Principal of Prince Charles School, copies of which are on file.

52. The Board must balance the interests of the neighbourhoods and the commercial interests of developers.
53. This balancing cannot be achieved by adhering to a strict mathematical calculation as has been done by the Development Authority in this case.
54. There is no possible Use that could be made of the existing building, with the existing on-site parking spaces, that would be acceptable to the City.
55. The existing Use is Professional, Financial, and Office Support Services in an older building in a mature neighbourhood, and the only way to achieve revitalization is to relax the parking requirements.

The Board heard from Chief Auger, Chief of the Bigstone Cree Nation, who made the following submissions:

1. The reserve is located 300 kilometres north of Edmonton.
2. They have no intention of disrupting the neighbourhood.
3. They were not aware of the parking issues when they purchased this site.
4. They want to provide a service that will benefit their band members and the City of Edmonton as a whole.

Ms. Belzil provided the following additional information:

1. Section 687 of the *Municipal Government Act* requires the Board to consider whether the proposed development would materially impact the use, enjoyment or value of adjacent property owners.
2. The proposed development will not have a negative impact on the neighbouring properties; only two residents of the neighbourhood are opposed.
3. It is impossible to provide 43 parking spaces on this site.
4. This is the best possible Use for this building.
5. Ms. Belzil reviewed all of the listed Uses in the CB1 Zone to illustrate that they are all subject to parking demands that exceed the number of parking spaces available on the site.
6. It is the intent of the Area Redevelopment Plan to preserve the site of the proposed development for commercial purposes.
7. This mature neighbourhood is in need of revitalization and the proposed development will accomplish that goal.
8. The neighbour who is impacted by the required 1.7 metre variance in the Side Setback has been consulted and does not object to the proposed variance.

The Board heard from Mr. Phillips, CEO of the Bigstone Health Commission, who provided the following submissions:

1. Health Services provided to Aboriginal groups is unequal.
2. Edmonton is projected to have the highest urban Aboriginal population of any city in Canada, and as a result, the services proposed by this development are required.
3. This neighbourhood has the highest percentage of Aboriginal people in the City, and many of these residents belong to Bigstone Cree Nation.

4. There is no medical facility on the Bigstone reserve, which means that band members have to come to Edmonton to receive medical care.
5. Band members are shuttled to medical appointments by Bigstone Health Commission's transportation system.
6. Not all medical professionals will accept band members as patients because funding, which is provided by the Federal Government, is limited, which is the reason Bigstone Health Commission operates its own health services.
7. Services will be provided at the proposed clinic and also through outreach into the community.
8. Not all 3,000 square feet of the building will be occupied; the basement will be used for storage and mechanical support for the building.
9. Edmonton needs this service and it will provide value to the neighbourhood.

Mr. Phillips provided the following responses to questions:

1. The shuttle system will mitigate the need for parking because patients will not use their own vehicles and will not require parking.
2. Seven vans operate all day in the City, servicing individuals from all over northern Alberta, making over 2,000 trips per month.
3. It is anticipated there will be ten patients in the facility at any given time because of the way appointments will be scheduled. Patients will be shuttled away from the clinic as soon as their appointment is finished.
4. Walk-in patients will not impact parking.
5. Because there are only five medical professionals on-site, it is estimated that there will be a maximum of five patients being examined at any one time, and five more patients waiting to be seen.
6. The Area Redevelopment Plan does not attempt to dissuade commercial development in the area.
7. Pharmacy visits will be a complimentary use that patients will access following their medical appointments.
8. The street parking available on 124 Street is adequate.

The Board heard from Mr. Wes Robson, representing the Inglewood Business Association, who provided the following submissions in support of the proposed development:

1. The Association has existed for 20 years.
2. The proposed development is a fantastic development to support the revitalization of this area.
3. The vacant building on the subject site has contributed to crime and poverty in this area.
4. The Business Revitalization Zone is fully supportive of the proposed development, which will help address these issues.
5. There is a vital need to provide Aboriginal health services in this area.
6. Mr. Robson has not spoken to a representative of the 124 Street Business Association about the proposed development, but assumes they would be supportive.

The Board heard from Ms. Gwen Muskwa, a member of the Bigstone Urban Action Group, who provided the following submissions in support of the proposed development:

1. More than half of the Bigstone Cree Nation's population lives off-reserve.
2. Approximately 800 band members live in Edmonton, most of whom use public transit.
3. Most band members will access the clinic by public transit, which has routes located near the subject site.

The Board heard from Mr. Michael Gunther, Legal Counsel for the City of Edmonton Law Branch, Mr. Greg Ablett, Transportation Services, and Mr. Imai Welch, representing the Sustainable Development Department who provided the following submissions:

Mr. Gunther advised the Board that he was in attendance to assist Mr. Welch and Mr. Ablett with their submissions. Mr. Gunther advised the Board that the decision was not taken lightly by either the Development Authority or Transportation Services. The City acknowledges the value of this project, but reiterated that the parking variance is a major concern. Mr. Welch acknowledged that he has little issue with the Side Setback variance requirement.

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

1. Mr. Ablett has reviewed the Bunt & Associates Parking Survey.
2. Mr. Ablett referenced the Bylaw requirements when reviewing the proposed Uses for Health Services and General Retail Stores and determined that 43 parking spaces were required.
3. There are only five spaces available on-site, which is inadequate.
4. Mr. Ablett considered the availability of street parking and land uses adjacent to the site.
5. Mr. Ablett also reviewed the demographics of the area and noted that this neighbourhood is high in pedestrian and cycling traffic. He would support a variance of up to 30% to accommodate these characteristics, but nothing greater than that.
6. Mr. Ablett agreed with the Bunt & Associates Parking Survey findings that 112 Avenue and 124 Street is an appropriate area for additional street parking for this development.
7. Parking on the north side of 112 Avenue is used by residents fairly often.
8. There is a 30 minute parking restriction for spaces located adjacent to the retail/residential unit on the north side of 112 Avenue.
9. The south side of 112 Avenue is used much less with 52 to 57 percent occupancy.
10. During the day approximately half of the parking is being used and it increases during peak times.
11. There is more parking available on 124 Street, with 10 to 25 percent occupied near the development, but peak hour restrictions are in place. Therefore, it is not appropriate for staff parking.
12. The proposed Pharmacy would require shorter term uses so that parking would be appropriate for three to four vehicles at any given time.
13. Because it is difficult to assess the number of clients that will arrive by the shuttle service, the calculations are based on the assumption that all patients would be driving and parking.

14. The light usage of the 30 parking spaces available on 124 Street between 111 Avenue and 112 Avenue was considered, but there remains a concern about parking during the peak time in the morning when staff and patients are arriving at the same time.
15. Restricted parking spaces may not be appropriate for staff members who will likely not want to park in an area where they are required to move their vehicles throughout the day.
16. Given the current level of parking on 112 Avenue, people will be enticed to park in the neighbourhood, which will exacerbate the situation.
17. The Bunt & Associates Parking Survey is a snapshot in time.
18. There are a finite number of parking spaces available on municipal streets and if they are all allocated to the proposed development, it has the impact of limiting further development in the area.

The Board heard from Mr. Imai Welch, representing the Sustainable Development Department, who provided the following submissions:

1. Part 3.5.1 of the Municipal Development Plan, *The Way We Grow*, states that redevelopment in established neighbourhoods must be sensitive to existing development and address potential capacity constraints on existing infrastructure.
2. This was also addressed by the Area Redevelopment Plan that was passed by City Council in 1985.
3. Policy 17 of the Area Redevelopment Plan addresses the shortfall of parking on 124 Street and the intrusion of commercial parking into the residential area.
4. Policy 23 of the Area Redevelopment Plan addresses the limited expansion of the commercial strip. Mr. Welch believes the subject site is outside of the commercial area located immediately north of 111 Avenue.
5. Section 54.2(1)(e) of the *Edmonton Zoning Bylaw* states that the Development Authority is expected to take the advice of Transportation Services when considering variances to parking.
6. Transportation Services has objected to the proposed parking variance. This is an extremely rare occurrence for a development permit application. The *Edmonton Zoning Bylaw* requires the consideration of the advice of Transportation Services.
7. Mr. Welch noted that the revised plans submitted by the Appellant label the basement as undesignated space rather than storage space.
8. The floor area of the basement was used in the calculation to determine that 43 parking spaces were required. If the basement is not included in the calculation, only 30 parking spaces are required.
9. There are a number of listed Uses for this Zone, both Permitted and Discretionary Uses, that have a lower parking requirement.
10. A development permit application for a Use that requires less than 33 parking spaces for this site would be granted.
11. Everyone has the right to use public parking.
12. A Medical Clinic has a high parking requirement, which is deliberate and based on demand.
13. The Development Authority has to be careful that this development, and the parking demand, does not restrict future development in the area.

14. Mr. Welch reiterated his opinion that this development, with the required parking variance, has the potential to unduly impact neighbouring property owners in this established residential area.
15. Mr. Welch cautioned the Board to think carefully about overturning the decision.

Mr. Welch provided the following responses to questions:

1. Refusing the application for this location does not conflict with Section 6.5.1.2 of the Municipal Development Plan because another location may be more suitable.
2. It is not a question of what the development is, but where the development should be located.
3. It was the Applicant's preference to locate the development in this neighbourhood because of the close proximity to band members.
4. However, the City may have taken a more active role in finding a more appropriate location or providing alternatives if this had not been the case.
5. Mr. Welch would not support tandem staff parking for a Health Services Use because of the nature of flexible work hours for jobs of this nature.
6. If a proposed Use on this site required 33 parking spaces or less it would have been approved even if Transportation Services would not support it.
7. Mr. Welch indicated that granting a development permit for a limited term would not be considered because it would be unfair to the Applicant given the significant financial investment the Applicant is making.
8. Removing the floor area of the basement from the parking calculation reduces the required number of parking spaces to 30.
9. He acknowledged that Section 54.1.2(g) of the *Edmonton Zoning Bylaw* allows the Development Officer to exercise his variance power to relax the vehicular parking requirements in Schedule 1, 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. This provision could have been considered in this case because of the physical constraints of the Site, but the Development Office must also take the advice of Transportation Services.

The Board heard from Mr. Dodd and Dr. Medal, from the Inglewood Dental Clinic, who provided the following information in opposition to the proposed development:

1. The Dental Clinic is located across the street from the subject site.
2. Prior to moving into their current location, they operated their Dental Clinic from the building on the subject site with 2,000 square feet of space and four employees.
3. Designated on-site parking was required because much of the available street parking was time restricted.
4. They advised their patients to park on 124 Street.
5. Given the parking problems they experienced, they questioned the feasibility of the proposed development with the required parking variance.
6. The scale of the proposed development will overwhelm the availability of street parking because parking on the north side of the building is restricted to 15 or 30 minutes.

7. When they applied to build their new facility, they were required to provide nine parking spaces that they initially thought excessive. However, they are now grateful because all of their parking is used.
8. The parking along 124 Street is not always available for overflow parking because vehicles park there for extended periods of time during the day. Street parking is also required for deliveries and postal vehicles.
9. They support the goals of the proposed development but do not want available parking spaces in front of their Clinic to be used as overflow parking by patients of the proposed Health Service.
10. They met all of the parking requirements for their business and believe everyone else should be expected to do the same.

Ms. Belzil made the following submissions in rebuttal:

1. The Development Authority uses a strict mathematical formula to calculate parking requirements for the entire City.
2. Section 687 of the *Municipal Government Act* requires that consideration be given to whether or not a particular development will unduly interfere with the amenities of a neighbourhood and the use and enjoyment of neighbouring parcels of land.
3. The objections of the Development Authority with respect to the parking spaces are solely based on formulaic calculations, and do not take into account the particular circumstances of this site.
4. Similarly, the requirement that the Board determine whether the proposed development will materially interfere with the use and enjoyment of neighbouring parcels of land was not addressed by the Development Authority and was not addressed with respect to this specific development.
5. This is a small building with no room for expansion.
6. The Board could impose a condition that the basement be used exclusively for storage which would reduce the amount of parking required.
7. The restricted 30 minute parking spaces are located on the north side of 112 Avenue and only affect a few spaces.
8. The rush hour parking restrictions on 124 Street change for morning and evening rush hours.
9. Patients will have scheduled appointments.
10. The hours of operation for the clinic will be 9:00 a.m. to 4:00 p.m.
11. Based on the evidence provided by the Development Officer, any development requiring up to 33 parking spaces would be approved even if Transportation Services did not support the application.
12. The major demand for on street parking on 124 Street is located south of 111 Avenue.
13. Transportation Services concurs that there will be a high usage of alternative modes of transportation in this area.
14. Various interests have to be balanced. Ms. Belzil argued that strict adherence to a mathematical formula does not encourage redevelopment in this area.
15. The building has been vacant for five years and it is likely to remain vacant if this development is refused.

Mr. Phillips made the following submissions in rebuttal:

1. The basement will be used for storage purposes, although it has not yet been determined how the space will be allocated between the health service professionals and the pharmacy.
2. The subject site is most attractive because there are 22 other facilities that assist with Aboriginal issues located in close proximity.
3. Not all staff will drive to work.
4. Health Canada only provides funding for certain limited medical services, which limits the possibility of any expansion.
5. They would be willing to accept the imposition of a condition that the basement of the building only be used for storage.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. The basement of the building on the subject site shall only be used for storage, mechanical rooms, a physical plant or other related uses. The basement cannot be used for the creation of additional treatment rooms to support the approved Use.
2. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 of the *Edmonton Zoning Bylaw*.
3. Bicycle parking shall be provided in accordance with Section 54.3 of the *Edmonton Zoning Bylaw*.
4. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices, pursuant to Section 51 of the *Edmonton Zoning Bylaw*.

Advisements

1. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. Hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: https://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-reuest.aspx
2. Any alley, sidewalk, or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as required by section 15.5(f) of the *Edmonton Zoning Bylaw*. The sidewalks and 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.

NOTES

1. 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 Direction 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. section 17.1).
3. Signs require separate Development Applications.
4. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
5. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
6. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The deficiency of 2.75 metres in the minimum required Setback, pursuant to Section 330.4(4) of the *Edmonton Zoning Bylaw*.
2. The deficiency of 38 parking spaces in the minimum required number of parking spaces, pursuant to Section 54.2, Schedule 1(A) of the *Edmonton Zoning Bylaw*.

Reasons for Decision:

The Board finds the following:

1. Health Services is a Permitted Use in the CB1 Low Intensity Business Zone, pursuant to Section 330.2(11) of the *Edmonton Zoning Bylaw*.
2. General Retail Stores with a Floor Area greater than 1,000 square metres is a Discretionary Use in the CB1 Low Intensity Business Zone, pursuant to Section 330.3(11) of the *Edmonton Zoning Bylaw*.
3. Based on the evidence provided, the proposed Discretionary Use, General Retail Store is a Pharmacy that will service the proposed Permitted Use, Health Care Service and the surrounding neighbourhood. There were no objections to the proposed Use.
4. Two required variances were considered by the Board.
5. The Board granted a variance in the minimum required Side Setback for the following reasons:
 - a) The Development Officer conceded that he was not concerned that this variance would negatively impact any of the adjacent property owners.
 - b) The Appellant provided evidence that the most affected property owner, located south of the subject site, provided verbal support for the required variance.

- c) The existing structure on the subject site will not be altered by the proposed change in Use.
- d) Allowing the building to remain as it has existed since 1979 will not unduly affect the amenities of the neighbourhood or materially affect the use and enjoyment of neighbouring properties.
6. The primary reason for the refusal was the required parking variance. The Development Authority determined that the magnitude of the required variance could potentially use a substantial portion of the available street parking, which would impact other commercial developments in the area and cause overflow parking in the neighbouring residential zones.
7. The Board considered all of the issues and has granted the required parking variance for the following reasons:
 - a) The Development officer conceded that any of the listed Permitted Uses in the CB1 Low Intensity Business Zone would require a variance on this site because there are only five available on-site parking spaces.
 - b) Even the least intensive of the Permitted Uses in the CB1 Low Intensity Business Zone would require a variance of 28 parking spaces.
 - c) Section 54.1.2(g) of the *Edmonton Zoning Bylaw* states that the Development Officer may exercise his 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.
 - d) The Board finds that the building, as it exists on the site, does create a hardship situation. The physical constraints of the site limit on-site parking to five spaces.
 - e) The West Ingle Area Redevelopment Plan has only allowed a few sites north of 111 Avenue to remain commercial in nature. As a result, this area will not be flooded with commercial developments, which will mitigate the impact of the parking variance on other commercial uses.
 - f) Based on the findings of the Bunt & Associates Parking Survey, there is ample street parking available within a one block radius of the subject site even during peak usage times. Therefore, the required parking variance will not cause parking congestion in close proximity to the subject site.
 - g) A condition has been imposed to restrict the use of the basement for storage and mechanical support. Therefore, removing this floor area from the parking calculation reduces the minimum required number of parking spaces.
 - h) Based on the evidence provided, patients will be transported to and from the clinic by shuttle vans operated by the Bigstone Health Commission, which will reduce the need for parking and mitigate the required parking variance.
 - i) The Health Service will operate between 9:00 a.m. and 4:00 p.m. which will mitigate overflow parking into the adjacent residential area when parking in the residential area will peak in the morning and evening hours.
 - j) The subject site is located on 124 Street, one block north of 111 Avenue, both of which are major public transit corridors.
 - k) Based on the evidence provided, most of the users of the proposed Health Service will use public transit, which will further reduce the demand for parking.

8. 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.

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

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: November 5, 2015
Project Number: 179375367-001
File Number: SDAB-D-15-253

Notice of Decision

This appeal dated October 1, 2015, from the decision of the Development Authority for permission to:

Change the Use from an Automotive and Equipment Repair Shop to an Animal Hospital and Shelter, and construct interior alterations (dog indoor play park)

on Plan 8146ET Blk 31 Lot E, located at 10417 - 79 Avenue NW, was heard by the Subdivision and Development Appeal Board on October 29, 2015.

Summary of Hearing:

At the outset of the appeal hearing, the Chairman 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 of the decision of the Development Authority to refuse an application to change the Use from an Automotive and Equipment Repair Shop to an Animal Hospital and Shelter, and construct interior alterations (dog indoor play park), located at 10417 - 79 Avenue NW. The subject Site is zoned CB2 General Business Zone and is within the Pedestrian Commercial Shopping Street Overlay and the Strathcona Junction Area Redevelopment Plan.

The Development Permit was refused because of a deficiency in the minimum required number of off-street parking spaces, as well as a concern that the proposed development would negatively impact adjacent residential and other properties because of potential noise.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant dated October 22, 2015
- A written submission from the Development Officer received on October 22, 2015

The Board heard from the Appellant, Ms. Gabriel Tay, who provided the following submissions in support of the appeal:

1. The proposed development is not a Boarding Establishment or Day Care.
2. It is an indoor play area for dogs that will be accompanied by their owners at all times.
3. There will be an off leash indoor play area for older dogs and an area for puppy training.
4. Ms. Tay revised the hours of operation to close at 10:00 p.m. instead of 10:30 p.m. to better comply with the Community Standards guidelines.
5. The proposed outdoor dog run in the area behind the building will be removed and reclaimed as parking space which will also reduce the amount of noise and reduce the required parking variance.
6. Ms. Tay is also prepared to sound proof the southern wall of the building, including dry walling over the existing overhead doors in an attempt to mitigate any noise concerns.

Ms. Tay provided the following responses to questions:

1. She was not able to contact the owners of the neighbouring apartment building to determine whether or not residents were supportive of her appeal.
2. The space will provide an indoor area for dogs and their owners to enjoy, especially during the winter months.
3. There is street parking available on 79th Avenue.
4. The bays located on either side of her site are currently up for lease.
5. Her target is to have 10 dogs per hour, but realistically there will not be 10 dogs on-site every hour.
6. There is a surface parking lot located between her site and the adjacent apartment building.

The Board then heard from Mr. Imai Welch, representing the Sustainable Development Department, who provided the following submissions:

1. He reviewed the application and made his decision to refuse it partly based on information provided that the area located behind the building would be an outdoor play area and not used for parking, resulting in a parking deficiency.
2. Based on the information provided that Ms. Tay plans to remove the outdoor play area and use that area for parking, he would support a parking variance based on his estimation that four vehicles could be parked in the area, which meets 2/3 of the parking requirement.
3. However, his main concern remains the amount of noise generated and the impact on neighbouring property owners.
4. Having 10 dogs on-site every hour in an enclosed space with the doors opening and closing has the potential to generate noise that would negatively impact the residents of the adjacent apartment building.
5. It was his opinion that noise will still be a concern even if the rear overhead doors are dry-walled and soundproofed.
6. He recognized that the site was previously used as an Autobody Shop, but he was unable to find any detailed information in the City records about that operation.
7. Autobody Shops are a Permitted Use in the CB2 Zone and Apartment Housing is a Permitted Use in the RA7 Zone. Therefore, it can be inferred that allowing this combination of uses in this area was contemplated by City Council and found to be compatible, subject to some limitations.

8. Animal Hospitals and Shelters are a Discretionary Use in the CB2 Zone which infers a potential for non-compatibility with Permitted Uses such as Apartments, even with some limitations.
9. Even though he is speculating about the amount of noise that may be generated, he erred on the side of caution and refused the Development Permit.

Mr. Welch provided the following responses to questions:

1. He acknowledged that Auto Body Shops can be quite noisy. He did not have any information regarding the hours of operation for the Auto Body Shop that previously operated from this site, but noted that most businesses of this type close at 6:00 p.m.
2. Based on an Internet research of several veterinary sites, he discovered that the potential noise of a single barking dog is known to be at least 60 decibels and can reach 100 decibels.
3. He could not provide details regarding the distance at which these tests were conducted.
4. He conceded that the noise generated by an Auto Body Shop could be at least as loud as a barking dog.
5. It was his opinion that all businesses should be subject to the Community Standards guideline which is a maximum of 85 decibels.
6. It is the current practice of the Sustainable Development Department to impose conditions on Auto Body Shops in an attempt to regulate the generation of noise.
7. His refusal was not based on specific numbers but rather on his decision to err on the side of caution.
8. Since he refused this application, Ms. Tay revised her plans to provide more parking and modify the business hours to close at 10:00 p.m. instead of 10:30 p.m.
9. However, these proposed changes do not change his decision to refuse the application.
10. Potential noise is still his primary concern because of the impact on adjacent property owners.
11. He did not know if the separation distance of 12 metres between the adjacent Apartment building and the subject site is sufficient to mitigate noise concerns.

Ms. Tay made the following submissions in rebuttal:

1. The soundproofing will be equivalent to a concrete wall.
2. She plans to offer her services to small dogs because of the limited space and noted that small dogs typically have a high pitched bark that is not as loud as that of larger dogs.
3. She does not plan to have the doors open at any time.

At this point, the Board Officer advised that 138 notices were sent to affected property owners, including those in the apartment building located across the rear lane.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following conditions:

1. The Applicant shall create and maintain four parking spaces in the gravel area located along the lane, south of the building;
2. The Applicant shall sound proof the southern wall of the building, including the existing overhead doors that currently exist along the southern wall of the two-storey commercial building;
3. The closing time of the proposed business shall be 10:00 p.m.

In granting the Development Permit, the following variances to the Edmonton Zoning Bylaw are allowed:

1. The deficiency of two off street parking spaces, pursuant to Section 819.3(8) of the *Edmonton Zoning Bylaw*.

Reasons for Decision:

The Board finds the following:

1. An Animal Hospital and Shelter is a Discretionary Use in the CB2 General Business Zone.
2. Based on evidence provided by the Appellant and the condition imposed to provide four additional parking spaces, the required variance has been reduced to two off-street parking spaces.
3. The Board has granted this variance for the following reasons:
 - a) The Development Officer conceded that he would not be opposed to granting a variance of two parking spaces;
 - b) Parking is available along 79th Avenue;
 - c) Based on this evidence, the Board finds that granting this variance will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
4. The Development Officer determined that the primary reason for refusal was that the proposed development was not reasonably compatible with the surrounding residential developments, specifically the Apartment House located immediately adjacent to the subject site because of the potential volume of noise created by the dogs that would be on-site.
5. The Board considered all of the evidence provided and has granted the required variances for the following reasons:
 - a) All dogs on-site will be contained entirely within the building, mitigating noise concerns;
 - b) A condition has been imposed that requires the Appellant to soundproof the southern wall, which is close to the adjacent Apartment building;
 - c) If the proposed business does exceed the noise levels pursuant to Bylaw 14600, the *Community Standards Bylaw*, actions to rectify the problem can be initiated through Bylaw Enforcement.

- d) No letters of objection were received from the residents of the adjacent Apartment Building who were notified about the refusal and the hearing and no one appeared in opposition to the proposed development.
- e) The Appellant submitted a list of neighbouring businesses that support the proposed development.
6. 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, 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 5th Floor, 10250 – 101 Street, Edmonton.
2. 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,
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