

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

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Date: October 23, 2015  
Project Number: 176545362-001  
File Number: SDAB-D-15-234

### **Notice of Decision**

This appeal dated September 10, 2015, from the decision of the Development Authority for permission to:

Change the Use from General Retail Stores (main floor) and Professional, Financial and Office Support Services (second floor) to Child Care Services (136 children, 9, 0-11 months/ 8, 12-18 months/ 18, 19 months-3 yrs/ 24, 3 yrs-4.5 yrs/ 32, 4.5 yrs-7 yrs & 45, school aged children) and to construct interior and exterior (on-site outdoor play area) alterations (Sector 17 Plaza Daycare)

on Plan 1125688 Blk 62 Lot 2B, located at 1752 - 34 Avenue NW, was heard by the Subdivision and Development Appeal Board on October 8, 2015.

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

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to approve an application to change the Use from General Retail Stores (main floor) and Professional, Financial and Office Support Services (second floor) to Child Care Services (136 children, 9, 0-11 months/ 8, 12-18 months/ 18, 19 months-3 yrs/ 24, 3 yrs-4.5 yrs/ 32, 4.5 yrs-7 yrs & 45, school aged children) and to construct interior and exterior (on-site outdoor play area) alterations (Sector 17 Plaza Daycare), located at 1752 - 34 Avenue NW. The subject Site is zoned CNC Neighbourhood Convenience Commercial Zone.

The development was approved with variances granted for the outdoor play space to be located within the 3.0 metre required Setback of the Site with the approved plans; and a deficiency in the number of on-site drop-off spaces and overall number of parking spaces, subject to conditions and subsequently appealed by an adjacent property owner.

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

- A written submission from the Development Authority dated September 21, 2015

- On-line responses from one neighbouring property owner in opposition to the proposed development.
- A written submission from the Appellant dated October 1, 2015.

The Board heard from the Appellant, Mr. Harrison, who referenced his written submission and reiterated his concern that the proposed development contravenes the City of Edmonton *Community Standards Bylaw 14600* Section 14 Item (1) which states that "A person shall not cause or permit any noise that disturbs the peace of another individual", enforcement of this Bylaw is outside the purview of the Board. Mr. Harrison also provided a petition containing 40 signatures of residents of the condominium apartment building which is located north of the subject site, in support of the appeal.

Mr. Harrison provided the following responses to questions:

1. Residents of 40 of the 76 condominium units support the appeal.
2. Although some of the residents of the condominium support the proposed child care service.
3. The parking structure is located approximately 15 metres from the building.
4. It is his understanding that the proposed child care service will house 135 children, 60 of which are not school age and would be at the centre all day.
5. There are a fair number of retired individuals living in the condominium.
6. A sound study was not undertaken.

The Board then heard from Ms. Yanda, an affected property owner who appeared in support of the appeal and provided the following information:

1. She resides on the fourth floor of the condominium building that faces the proposed child care service.
2. She was recently advised by one of the residents on the north side of the condominium building that they experienced some noise problems because of 6 to 9 children playing in a yard abutting that side of the building.
3. Their condominium building has been designed in a U-shape which captures noise and creates echoing.
4. It was her opinion that the noise generated by the proposed child care service will decrease the value of her property. However, she did not have a professional opinion to support this contention.
5. Heavy traffic causes problems when accessing their site and it was her opinion that the proposed child care service will exacerbate this problem.
6. It was her opinion that the proposed outdoor play area was not appropriate for this location.

Ms. Yanda provided the following responses to questions:

1. The parking structure is covered to protect vehicles from the elements.
2. Many of the neighbours are very angry about the proposed development and signed the petition in support of the appeal.

3. The closest school is a Junior High School that is located approximately 7 blocks from the subject site.
4. She took exception to the proposed late change to a previously approved development permit for a Professional Office Use.

The Board then heard from Ms. Erica Peacock, representing the Sustainable Development Department, who provided the following information:

1. The proposed Child Care Service is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone.
2. The proposed Child Care Service will occupy a two storey space on the northwest end of the building that is currently under construction.
3. The variance to the setback requirement was granted to accommodate a play area that complied with the Provincial regulations.
4. This is the most appropriate location on the site for the proposed Child Care Service.
5. A hardship was created for the Applicant because of the previously approved development permit for a Professional Commercial Use at this location.
6. The only other possible location for the Child Care Service is at the south end of the building abutting 34 Avenue. However, that location poses safety concerns for parents dropping and picking up children along 34 Avenue which is a busy collector roadway.
7. The neighbouring garage structure, drive aisle and parking area in front of the condominium building will mitigate the required variance.
8. It was her opinion that the proposed Child Care Service will not negatively affect any of the neighbouring property owners.

Ms. Peacock provided the following responses to questions:

1. She granted a variance to allow the outdoor play space in the side setback to allow a play space that complied with the size requirements of the Provincial regulations.
2. The building is already under construction and the existing setback was not large enough to accommodate an outdoor play area that met the size requirements.
3. She did not receive any feedback from the Community League.

The Board then heard from Mr. Brian Allsopp, representing the Applicant, Brian Allsopp Architects who provided the following information in support of the proposed development:

1. The building that was previously approved, is approximately 75 percent complete and is scheduled to open in the spring of 2016.
2. The building is setback 9 metres from the property line which exceeds the minimum required setback of 3 metres.
3. The building structure has not changed from the original development permit approval.
4. There was no objection to the initial development from the Appellant or any of the other affected property owners.
5. Mr. Allsopp referenced drawings that were submitted with the application to explain that 6 metres of the proposed outdoor play area is not located within the required setback.
6. The original building design did not contemplate a Child Care Service Use.

7. This neighbourhood is comprised of many young families and there is a demand for Child Care Services.
8. He referred to the site drawings to illustrate the location of the neighbouring gas bar.
9. The pump island is located on the south side of the gas bar and complies with the minimum required separation distance from the proposed Child Care Service.
10. The proposed Child Care Service will operate between 8:00 a.m. and 3:00 p.m., Monday to Friday and will remain open until 6:00 p.m. to accommodate children that require after school care.
11. It will only operate during day time hours and will not be open during the evening.
12. It was his opinion that neighbouring residents cannot anticipate quiet enjoyment without noise as part of city life and that the concerns raised by the Appellant are not directly related to the proposed development.
13. The concerns regarding frustration with construction noise and the sound retention effects of their condominium design are outside the control of the owner of the proposed Child Care Service.
14. Three trees will be planted in the proposed outdoor play area.
15. There is a 1.8 metre high fence existing on the property line.
16. He was not sure if a higher fence or a noise attenuating fence would address the noise concerns of residents on the higher floors of the condominium building.
17. It was his opinion that a higher fence would be unsightly and would have more of an adverse impact on the neighbourhood.
18. He suggested that it would be a challenge for an acoustic Engineer to model the impacts of the noise made by children playing outside.
19. It would be a hardship for his client to reduce the outdoor play space by 1/3 because this would reduce the number of children allowed by Provincial guidelines by 1/3. This would result in significant economic hardship and may force them to reconsider proceeding with the development.
20. The Child Care Service will provide a valuable amenity in this neighbourhood.
21. The proposed Use is consistent with the Area Structure Plan and is contemplated as a Use within the CNC Neighbourhood Convenience Commercial Zone.
22. The residents of the adjacent row housing development that is closer to the subject site have not provided any opposition to the proposed development.
23. There are limited options for the outdoor play space on the subject site.
24. The local school and school yard are located too far away and Provincial guidelines would not allow this space to be used as outdoor play space for the proposed Child Care Service.
25. He agreed with the Development Officer's finding that it would not be appropriate to locate the outdoor play space on the side of the building that abuts 34 Avenue because of safety concerns.

Mr. Allsopp provided the following responses to questions:

1. He described the location and the type of fencing that will be provided.
2. Locating the outdoor play area within the setback would result in a loss of parking spaces and a parking variance would then be required.
3. The approved building complies with the parking requirements.

4. The original plans provided a 9 metre setback which exceeded the minimum required 3 metre setback in order to comply with the parking ratio and comply with the Bylaw requirements.
5. He agreed that another Discretionary Use with the potential to generate more noise than the proposed outdoor play area could have been proposed in this location.
6. The type of outdoor play structures has not yet been determined but most Child Care Services do not use permanent structures because of the winter conditions.
7. The developer would be willing to look at alternative fencing to address the concerns of the Appellant and neighbouring property owners. However, a higher fence may not address noise issues for residents on the third and fourth floor of the condominium building.

Mr. Harrison provided the following information in rebuttal:

1. It was his understanding that the building housing the proposed Child Care Service had to be located at least 50 metres from a gas bar and in this instance it is located 51.1 metres from the gas bar on site.
2. He questioned where the children for the Child Care Service would come from since most of the residents in this neighbourhood are of a culture that, for the most part, does not use Child Care Services.
3. The residents living on the third and fourth floor of the condominium building will have a direct sight line to the Child Care Service and outdoor play area and there is nothing to stop the filtering of sound.
4. Children generate noise continuously at 90 decibels which will significantly impact the residents of the condominium into the future.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

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

Section 310.4(7) of the *Edmonton Zoning Bylaw* has been relaxed to allow a portion of the outdoor play space to be located within the 3.0 metre Setback at the north-west corner of the Site in accordance with the approved plans.

Section 55 of the *Edmonton Zoning Bylaw* has been relaxed to allow Landscaping, as shown on the approved Landscaping Plan, in the location of the on-site outdoor play area, is deferred until such a time when the on-site outdoor play area is removed.

Section 54.2, Schedule 1 of the *Edmonton Zoning Bylaw* has been relaxed to allow the deficiency of three vehicular parking spaces and four on-site drop off spaces and reduce the required parking from 91 to 88 spaces.

**Reasons for Decision:**

The Board finds the following:

1. A Child Care Service is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone.
2. The site is currently being developed as a multi-tenant General Retail and Office Building.
3. The site is bordered by an Apartment Building to the north, Row Housing to the west, a Gas Bar to the east and, separated by 34 Avenue and Single Detached Housing to the south.
4. The Board has granted the required variances for the following reasons:
  - a) The variance to allow a portion of the outdoor play space to be located within the 3.0 metre Setback at the north-west corner of the Site will be mitigated because there is a green space adjacent to the Row Housing development to the west and parking garages between the subject site and the Apartment to the north.
  - b) The Applicant submitted a letter of support from the owner of the Row Housing development that is located closest to the proposed outdoor play area.
  - c) Based on the evidence provided, children using this facility will have different arrival and departure times.
  - d) Transportation Services did not object to the proposed deficiency of three parking spaces because there is additional on-street parking available.
  - e) The Development Officer considered the impact of noise resulting from the proposed outdoor play area on adjacent neighbours but determined that there is sufficient separation from the on-site outdoor play area to residents in the Apartment Housing to the north and the play area will be buffered from the Apartment by parking garages located along the south property line.
5. While the Board acknowledges the Appellant's concern that the noise from the outdoor play area may contravene the City of Edmonton *Community Standards Bylaw 14600* Section 14 Item (1) which states that "A person shall not cause or permit any noise that disturbs the peace of another individual", enforcement of this Bylaw is outside the purview of the Board.
6. The Board acknowledges the petition signed by 40 affected owners and renters, the on-line response from one affected property owner in opposition to the proposed development and the evidence of another affected property owner who attended the hearing in opposition to the proposed development.
7. However, the Board finds that sufficient technical evidence or planning reasons regarding the impact of the noise generated by children using the proposed outdoor play area was not provided that would lead the Board to determine that granting the required variances would materially affect the use and enjoyment of neighbouring properties.
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, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

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Date: October 23, 2015  
Project Number: 142819242-008  
File Number: SDAB-D-15-235

## **Notice of Decision**

This appeal dated September 11, 2015, from the decision of the Development Authority for permission to:

Increase the number of children in an existing Child Care Services Use building from 23 to 38 (adding 15 school aged children in basement) (Panda Cub House Childcare)

on Plan 0621532 Blk 58 Lot 52, located at 16203 - 55 Street NW, was heard by the Subdivision and Development Appeal Board on October 8, 2015.

### **Summary of Hearing:**

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to increase the number of children in an existing Child Care Services Use building from 23 to 38 (adding 15 school aged children in basement) (Panda Cub House Childcare), located at 16203 - 55 Street NW. The subject Site is zoned RSL Residential Small Lot Zone.

The development permit was refused because of a deficiency in the number of required on-site drop-off spaces; a deficiency in the number of required employee parking spaces; and that no required parking shall be provided as Tandem Parking. It is the opinion of the Development Officer that by increasing the number of children in this Child Care Service there will be an increase in activity within the existing on-site outdoor play area that may interfere with the peaceful enjoyment of the properties of nearby residents.

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

- A written submission from the Development Officer dated September 21, 2015
- A written submission from the Appellant, including a petition of support.
- Three on-line responses in opposition to the proposed development.



The Board heard from the Ms. Ludy Magracia, representing the Appellant, Panda Cub House Child Care Centre. Ms. Magracia referred to her written submission and provided the following information in support of the appeal:

1. It was her opinion that the proposed number of drop-off spaces is adequate. There are two drop-off spaces on the driveway, two spaces near the bus stop along 162 Avenue and 55 Street and 3 drop-off spaces across the street near the mailbox.
2. Parents usually drop off their children between 7:00 and 8:00 a.m. and pick them up after 3:00 p.m. when the parking restrictions are not in effect.
3. The basement of the house is currently vacant but will be set up to provide space for the additional 15 out of school children.
4. Noise will be contained in the basement.
5. Her staff walk, carpool or use public transit to get to work.
6. She read a letter of support from one of her clients, marked Exhibit "A".
7. The additional child care spaces will help many families in this neighbourhood.

Ms. Magracia provided the following responses to questions:

1. The house is used as a full time Child Care Service from Monday to Friday.
2. Provincial licensing will still be required for children in Grade 1 to 6.
3. One additional employee will be hired to supervise the proposed 15 additional children.
4. Only one of her current employees drives to work.
5. She estimated that there are approximately 900 students attending Donald Massey Elementary Junior High School with 65 staff members.
6. Panda Cub House Child Care Centre is the only child care facility in this neighbourhood.
7. She was not aware of any licensed Day Homes operating in the area but there could be some unlicensed Day Homes in the neighbourhood.

The Board then heard from Ms. Erica Peacock, representing the Sustainable Development Department, who reviewed her written submission and provided the following information:

1. A development permit application to convert a Single Detached House into a Child Care Services Use was approved by the Subdivision and Development Appeal Board in November 2013. The application was for a maximum of 45 children but the Board limited the number of children to 23.
2. Increasing the number of children will result in additional staff and an additional parking variance would be required which in her opinion would be excessive.
3. Transportation Services expressed concerns with the proposed development because of the proposed on-site parking deficiency of 3 parking spaces. Parking along 162 Avenue is restricted between 8:00 a.m. and 9:00 a.m. and 1:30 p.m. to 3:30 p.m., Monday to Friday; there is a bus stop in the area and on street parking on 55 Street is limited because of front drive access on the east side of 55 Street.
4. Tandem parking is permitted for Day Homes but not for Child Care Services.
5. One of her primary concerns was the negative impact on neighbouring property owners because of the increased noise that would result from children using the limited outdoor play area.

6. There is an Apartment building located east of the subject site.
7. She did not have any information regarding the operation of other day homes or child care services in the immediate area.
8. A day home for a maximum of 6 children does not require development permit approval.
9. The original approval included the provision of drop off spaces on a neighbouring property. However, those spaces are no longer available to the Applicant.
10. Ms. Peacock was not aware of any parking complaints specifically associated to the child care service.

The Board then heard from Ms. Smith, an affected neighbour who appeared in opposition to the proposed development and provided the following information:

1. She resides four houses away from the subject site and her main concern is the parking impact.
2. People have parked on her driveway for extended periods of time and she has had several near misses when turning onto her street because of vehicles backing out of the driveway for the child care service.
3. Parking is no longer available inside the attached garage because it has been converted into usable space for the child care service which has eliminated two on-site parking spaces.
4. Parking is restricted on both sides of 162 Avenue between 55 Street and 55A Street.
5. Bus stops are located on both sides of 162 Avenue.
6. Buses have had to stop in the middle of 162 Avenue because vehicles are parked on both sides of the Avenue and she has seen parents leave their vehicles in the middle of the street to drop off their children.
7. The school predates the child care centre and she conceded that most of the parking and traffic problems are associated with the school.
8. She agreed that the drop off and pick up times for the child care service do not conflict with the restricted parking times.

The Board then heard from Ms. Fidelak, an affected property owner who appeared in opposition to the appeal and provided the following information:

1. She reiterated that parking is the major concern and that is a result of the combined impact of the school and the child care service.
2. She has trouble accessing her property from the rear lane because parked vehicles block the lane.
3. On street parking makes street cleaning and snow clearing difficult.
4. There are numerous day homes soliciting children in this area.
5. Additional parking on a neighboring property is no longer available to the child care service.

Ms. Magracia made the following points in rebuttal:

1. She applied to increase the capacity of her facility to help families in the neighbourhood.
2. The traffic and parking issues are associated with the school and not her child care service.
3. If any of the neighbours witness parking infractions by her clients she is prepared to resolve the situation for the neighbours.

4. She confirmed that parking is no longer available on the neighbouring property.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

**Reasons for Decision:**

The Board finds the following:

1. A Child Care Service is a Discretionary Use in the RSL Residential Small Lot Zone.
2. The Board also notes the correspondence received in both support and opposition to the proposed development.
3. The Board acknowledges that the proposed development may provide a much needed service in this neighbourhood. Nevertheless, the parking variances were not granted for the following reasons:
  - a) The Site is a corner site abutting two collector roadways and is located in close proximity to a park and Donald Massey Elementary Junior High School.
  - b) Based on the evidence provided by the Development Officer, Transportation Services and affected neighbours there are significant traffic and parking problems in this neighbourhood.
  - c) There is limited ability to accommodate drop-off parking along 55 Street because of the existing front access driveway configuration and conflict between parents dropping off their children at school and parents trying to drop-off and pick up children from the Child Care Centre.
  - d) The proposed increase in the number of children attending the Child Care Centre will require additional staff and there is insufficient on site or street parking available to accommodate staff parking.
  - e) Transportation Services does not support the required variance in the minimum required number of on-site parking spaces.
  - f) The Board acknowledges that a significant majority of the parking and traffic problems in this neighbourhood are related to the proximity of the school. However, the proposed development will intensify the use of the site and exacerbate already poor traffic and parking situations.
4. Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

**Important Information for Applicant/Appellant**

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application

for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board