



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 28, 2018
Project Number: 284186541-001
File Number: SDAB-D-18-145

Notice of Decision

- [1] On September 13, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 15, 2018. The appeal concerned the decision of the Development Authority, issued on August 15, 2018, to refuse the following development:

To change the Use from General Retail Store to a Child Care Service (140 Children) and to construct exterior alterations (new outdoor play space).

- [2] The subject property is on Plan 4575S Blk 12 Lots 1-7, located at 9639 - 82 Avenue NW, within the (CB2) General Business Zone. The Main Streets Overlay and the Strathcona Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions; and
 - An e-mail in support of the proposed development from an adjacent condominium owner.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A written submission from Mr. B. Gaetz; and
 - Exhibit B – A City of Edmonton Slim map of the area.

Preliminary Matters

- [5] 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.

- [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.

Summary of Hearing

i) *Position of Ms. D. Ellendt-Cooper, representing the Appellant, Country's Finest Child Care Centre Ltd., who was accompanied by Mr. B. Gaetz*

- [8] Ms. Ellendt-Cooper is the owner and director of the Child Care Service.
- [9] Mr. Gaetz is a commercial realtor and Certified Radio Group is his client.
- [10] He has an offer to lease the subject building to the Child Care Service.
- [11] He referred to Exhibit 1 of his written submission (*Exhibit A*) outlining that the Appellant requested an on-site meeting with the Development Officer and Transportation to address issues with the proposed development permit.
- [12] They were advised that the parking requirements for the main street transit oriented properties do not have any requirement for drop-off and pick-up for Child Care Services.
- [13] In their opinion, parking is not an issue and on-street parking will accommodate the drop-off and pick-up of children.
- [14] He referred to Exhibit 2 of his submission, a letter from the owner of Certified Radio, which outlined the operation of the business.
- [15] He referred to Exhibit 3 of his submission, a site plan showing the layout of the Certified Radio business.
- [16] He referred to Exhibit 4, Page 1 of his submission, a letter from Ms. Ellendt-Cooper outlining parking for the proposed Child Care Centre.
- [17] He referred to Exhibit 4, Page 2 of his submission that outlines the hours of operation and the volume of children being dropped off or picked up.
- [18] He referred to Exhibit 4, Pages 3 and 4 of his submission, a memorandum from Transportation responding to the proposed development permit application.
- [19] He referred to Exhibit 4, Page 5 of his written submission showing the site plan and the distance from the entrance to the Child Care to the bus stop and to the loading zone, which is east on the subject lot. In their opinion, there is room to park eight to ten vehicles in this area.

- [20] He referred to Exhibit 5 of his submission, an e-mail from the Development Officer outlining the additional parking that is available for the Child Care Service. A site plan shows the proposed parking spaces.
- [21] They feel there are sufficient on-street parking and employee parking spaces.
- [22] He referred to Exhibit 6 of his submission, an e-mail from the near-by Church outlining a potential parking agreement to use their parking lot.
- [23] Parents using the Child Care Service will ensure the safety of their children.
- [24] They referred to an e-mail submitted from Ms. Campbell in support of the proposed development. They stated that there is a need for a Child Care Service in the neighbourhood.
- [25] Ms. Ellendt-Cooper stated that she has been the Director of the Child Care Service for 23 years working within the Ritchie Community.
- [26] The existing Child Care Service outgrew the space they were in and they have been looking for a new space for approximately five years. Finding space to accommodate an outdoor play space and parking has been difficult.
- [27] The Child Care Service has a good reputation in the community. There is a two year wait list with families that want to use their business.
- [28] The new site is in close proximity to the Mill Creek School.
- [29] They have been in partnership with a playschool for over 10 years and some of those children will also use the Child Care Service.
- [30] The Child Care Service is open 7:00 a.m. to 5:30 p.m. Parents will drop off and pick up children throughout those hours and will not all be at the site at the same time.
- [31] The Child Care Service offers out of school care; however, some of the children are picked up at the school and not always at the site.
- [32] In her opinion, the proposed development will not increase parking congestion on Whyte Avenue or the area.
- [33] Ms. Ellendt-Cooper and Mr. Gaetz provided the following information in response to questions by the Board:
- a. The Child Care Service is currently operating in a basement of a Church and they have outgrown their space.

- b. Moving the Child Care Service to the subject site will allow them to increase the number of children using their business.
- c. The Child Care Service has 107 children that will occupy the main floor of the building. There will be 40 children using the playschool in the upper floor of the building.
- d. She could not confirm the hours of operation for the playschool.
- e. Although 40 spaces are allotted for the playschool, there spaces may not be filled to capacity.
- f. She could not confirm the pick-up hours for the playschool.
- g. They confirmed that there are eight to ten spaces along the roadway in front of the Child Care where vehicles can park.
- h. Certified Radio has designated parking spaces for the employees.
- i. Employees will walk children and from to the school.
- j. The number of children may not be to the maximum of 140 children, the number requested on their application.

ii) Position of Affected Property Owners in Support of the Appellant

Mr. K. Haldane, Ogilvie LLP

- [34] Mr. Haldane is speaking as an affected party for the playschool.
- [35] His wife is the Director of the playschool and his daughter will attend the playschool in the future.
- [36] The playschool rents space from the subject Child Care Service.
- [37] He referred to sections in the *Edmonton Zoning Bylaw* regarding parking requirements.
- [38] The change of use from a General Retail Store to a Child Care Service will have the same parking requirements.
- [39] In his opinion, parking is not an issue.
- [40] He referred to a Google Slim Map showing the location of the Mill Creek School and additional parking at the Church site east of the subject Site (*Exhibit B*). The additional parking is within walking distance to the Child Care Service.

- [41] He confirmed that the Child Care Service is able to enter into a parking agreement with the Church.
- [42] There will be 16 children in a morning class and afternoon class at the playschool. Children will be at the Child Care Service when they are not at the playschool.
- [43] Mr. Haldane provided the following information in response to questions by the Board:
- a. The entrance to the Child Care Service and playschool faces Whyte Avenue and will not interact with people coming and going from Certified Radio.
 - b. Certified Radio is willing to designate one area of their parking area to be used by the Child Care Service employees.
 - c. Certified Radio only installs radios and does not do any mechanic work which will not have an impact on the Child Care Service.
 - d. There is a nuisance Bylaw that adjacent businesses need to follow.
 - e. The play area for the children is at the rear of the building. Children may hear music from Certified Radio if they are playing outside.
 - f. He could not confirm if another use would have a negative impact on the Child Care Service.

Mr. A. Dixon

- [44] He is representing Certified Radio who will be leasing space for the Child Care Service.
- [45] Certified Radio has been at this location for 20 years and has now expanded to other locations in the City.
- [46] They have had up to 50 employees and parking has never been an issue.
- [47] Certified Radio preciously occupied the space where the Child Care Service will be.
- [48] Employees have usually parked in front on the roadway and across Whyte Avenue and there has never been an issue with parking.
- [49] Employees have never parked where customers park.
- [50] Certified Radio has not done mechanical work on vehicles for the past year. There will not be a concern regarding hazard materials. The business operation is mostly fabrication.
- [51] Several customers come to the site to purchase products.

- [52] Mr. Dixon provided the following information in response to questions by the Board:
- a. There is room for vehicles to park on both sides of the parking lot which is closer to the outdoor play area.
 - b. He confirmed that there are 10 parking spaces in the rear of the building.
 - c. He could not confirm the size of the parking spaces; however, he is able to park his full size truck in the spaces provided.
 - d. He agreed that the site plan does not reflect the number of on-site parking spaces.
 - e. He confirmed that there are six parking spaces in the rear parking lot and 10 additional parking spaces that are not reflected on the site plan.

Mr. J. Johnson

- [53] He is the Director of the Edmonton French Quarter Business Association that falls within the boundary of the neighbourhood.
- [54] In his opinion, there is a need for additional Child Care Services in the neighbourhood.
- [55] Businesses in the area have contacted them for the location of existing Child Care Services in the neighbourhood for their employees.

iii) Position of the Development Officer, Ms. J. Kim

- [56] The Development Authority did not appear at the hearing and the Board relied on Ms. Kim's written submission

iv) Position of an Affected Property Owner in Opposition

Ms. K. Milke

- [57] Ms. Milke's property is across the rear lane from the subject site.
- [58] She is an entrepreneur and works from home.
- [59] She is not opposed to the Child Care Service, but is concerned for the safety of the children.
- [60] She often sees homeless people sleeping in the rear lane and has witnessed drug transactions behind the Certified Radio building.

- [61] In her opinion, the outdoor play area is too close to the rear lane and will not be safe for children.
- [62] When Certified Radio does installations, the systems are tested loudly and she can hear the sound from inside her house. In her opinion, children will be negatively impacted by the noise from Certified Radio.
- [63] Ms. Milke provided the following information in response to questions by the Board:
- a. Drop-off and pick-up of the children will be in the front of the building. However, parents will be able to access the property from the rear of the building and walk to the front entrance.
 - b. In her opinion, people will be coming and going through the rear lane.
 - c. On occasion, the rear lane has been blocked due to deliveries at Certified Radio, which will create traffic issues.
 - d. She does not have an issue with noise from children when they are outside.
 - e. The house adjacent to her property has children but that yard is screened with mature trees and a garage that blocks the view of the rear lane. In her opinion, this is different than children playing in the outdoor play area adjacent to the rear lane.

v) *Rebuttal of the Appellant, Ms. D. Ellendt-Cooper and Mr. B. Gaetz*

- [64] Not all parents will drive to the Child Care Service.
- [65] Some of the students at the Mill Creek School use public transportation.
- [66] Employees are hired within the community and use public transportation.
- [67] Safety is a priority for the children. This Child Care Service has a policy to check the facility each day to ensure that the area is secure and clean.
- [68] The outdoor play space is fenced with a privacy slats and they are required to have a gate that locks to prevent children from getting out.
- [69] If there is an emergency the business has a lock down system in place and the police are called.

Decision

[70] 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. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.c).
2. 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. (Reference Section 51).
3. Where outdoor play space is provided at ground level it shall be Fenced (a minimum 1.83m high) on all sides and all gates shall be self-latching.

ADVISEMENTS:

1. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
2. Signs require separate Development Applications.

[71] In granting the development, the following variances to the *Edmonton Zoning Bylaw* (the *Bylaw*) are allowed:

1. Section 80.2(a)(i) is waived to allow the proposed development to be located adjacent to the building bay of an Automotive and Equipment Repair Shop.
2. Section 54.2, Schedule 1(C)(7) is waived to allow a deficiency of five on-site parking spaces.

Reasons for Decision

[72] Child Care Services is a Discretionary Use in the (CB2) General Business Zone.

[73] The Board waives the location requirement per section 80.2(a)(i) of the *Bylaw* for the following reasons:

- a. The Board is satisfied with the operations and policies in place with a long standing Child Care Services operator that demonstrated that there is no direct interaction between employees and children with the existing Automotive and Equipment Repair Shop (the “Auto Shop”).
- b. The Board notes that the entrance into the Child Care Service is east of the Auto Shop and is directly located facing 82 Avenue. There is no interaction between the employees and children of the Child Care Service and the Auto Shop.
- c. The existing Auto Shop Use has been operating for 20 years in the same location and it is the Board’s opinion there would be a minor impact on the surrounding neighbours and the proposed development given the types of services provided.
- d. However, the Board did consider the definition of Automotive and Equipment Repair Shop and is satisfied that notwithstanding the current operation of the Auto Shop, the Board was not presented with any evidence that future operations would not have similar impact on the proposed development.
- e. Notwithstanding the Board waiving this location requirement, the Board notes that there are other provincial regulations that this operation would have to meet.

[74] With respect to parking, the Board provides the following:

- a. The Board notes that the plans that were provided and refused by the Development Authority may not reflect the actual number of parking spaces on-site. The Board heard from the property owner of the subject Site that indicated there are additional 10 parking spaces available that should have been plotted on the site plan. While this is relative information, the Board did not have an updated site plan on which to make a final conclusion.
- b. The Board, however, does not believe that by granting a deficiency of five parking spaces would negatively impact the proposed development as although each of the deficient parking spaces are slightly smaller than the minimum parking space dimensions, they will still be utilized. Further, there is on-street parking available directly on the south side of 82 Avenue that is not restricted and there is a bus stop approximately 30 metres from the proposed development.

[75] With respect to the Discretionary nature of the Child Care Service, the Board finds that the proposed development is reasonably compatible with the surrounding neighbourhood for the following reasons:

- a. The location of this Child Care Service moves it closer to the former location and closer to the Mill Creek School, which will service this community.

- b. The Board heard from the Director of the Edmonton French Quarter Business Association, in which the subject Site is encapsulated, that indicated support for the proposed development as there was general support by business owners on 82 Avenue.
- c. The Board did not receive any opposition from the Ritchie Community League. However, the Board did receive a presentation by an affected property owner in opposition to the proposed development because of security and safety concerns. The Board does not support this conclusion and is satisfied that the fencing, gate and other requirements of the *Bylaw* and provincial regulations will need to be complied with. Further, many of the security and safety concerns raised are outside the Board's purview and are dealt with by Bylaw Enforcement and the Edmonton Police Service.

[76] Based on the reasons above and pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance:

Ms. P. Jones; Ms. L. Gibson; Ms. M. McCallum; Mr. J. Jones

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.



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Application No. 279104362-001

An appeal to construct a Garden Suite was **WITHDRAWN**.