



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 3, 2019
Project Number: 323710827-001
File Number: SDAB-D-19-160

Notice of Decision

- [1] On September 26, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 23, 2019**. The appeal concerned the decision of the Development Authority, issued on August 16, 2019, to refuse the following development:

To develop and operate a temporary surface, Non-accessory Parking lot for up to 18 months (117 vehicular parking stalls).

- [2] The subject property is on:

Plan B2 Blk 5 Lot 133, located at 10123 - 106 Street NW
Plan B2 Blk 5 Lot 134, located at 10145 - 106 Street NW
Plan B2 Blk 5 Lot 135, located at 10145 - 106 Street NW
Plan B2 Blk 5 Lot 136, located at 10145 - 106 Street NW
Plan B2 Blk 5 Lot 137, located at 10145 - 106 Street NW

The lots are within the (UW) Urban Warehouse Zone. The Downtown Special Area and Capital City Downton Plan (the “Downtown 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 submissions;
- The Appellant’s written submissions; and
- One online response (neutral).

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer, Mr. B. Gibson, advised that he sat on a hearing regarding an appeal on the same property on May 3, 2017 (SDAB-D-17-

080). Two of the side members, Ms. S. LaPerle and Mr. M. Young also disclosed that they had sat on that appeal. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, J. Murphy, Q.C. representing Ogilvie LLP

- [7] Mr. J. Murphy appeared on behalf of his clients, Arc Studio and Westrich Management Ltd. (“Westrich”)
- [8] A previous decision was issued by the Board on May 17, 2017 which upheld the Development Officer’s decision to refuse a Non-accessory Parking lot on this same site (SDAB-D-17-080). Circumstances have changed substantially since that time. The previous application was seeking to continue the Non-accessory Parking for 10 years as opposed to the 18 months his clients are requesting. The previous applicant was a holding company, not a developer.
- [9] The three reasons of refusal contained in the refused development permit application were referenced. Granting the required three variances would 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. Spending money on landscaping at this time would be a complete waste of time and money and the location of the snow pile is a non-issue in this circumstance.
- [10] The City of Edmonton (the “City”) slim map was referenced to provide context to the area.
- 1) The subject site consists of the same 5 lots that were the subject of the May 17, 2017 appeal decision.
 - 2) The amenities of this neighbourhood consist of many surface parking lots and will remain as such for a while.
 - 3) The site immediately across the street to the west is slated for a new warehouse district park. The City is projecting that construction of this park will not commence until 2022 or 2023. In the meantime, no new development will be undertaken at this park site.

- 4) The only site on the streetscape that is being used for anything other than surface parking is an older building at the intersection of 106 Street and 102 Avenue which is an arts and crafts centre.
- [11] A copy of one of the five titles for the subject site (they are all the same) indicates that his clients acquired the land in December 2017. The entire site has been leased to Alberta Health Services (“AHS”) as per Caveat 182 256 527 which has been registered on the title.
- [12] The Development Officer’s submission included a letter from AHS to the City confirming that AHS is aware that Westrich has applied to rezone the site for apartment development and that they would only be a temporary user until that development takes place.
- [13] The Appellants would be amenable to a condition being placed on the permit that stipulates that the parking may only be used by AHS. The Appellants have no issues with any of the other conditions suggested by the Development Officer should this appeal be allowed.
- [14] Tab 5 of Mr. Murphy’s submission contains a screen shot from the City’s land development application site which confirms that Westrich’s application to rezone the subject property to DC2 to accommodate a tower has been submitted. Renderings of the proposed tower are also included under this tab. Unlike the previous owner, Westrich’s intention is not to hold the lot but to develop it.
- [15] Rezoning to DC2 was obtained on June 6, 2019 for the five lots immediately to the north of the subject site. That application was submitted on July 23, 2018 and there would have been several months of pre-application processes prior to this application date. The reality is that it takes a significant amount of time to develop property in the City.
- [16] The Appellants are not trying to thwart the Downtown Plan but are trying to make a use of the land that does not bother anyone until the rezoning application is approved. The requested interim parking has no negative impact on anyone and allows the Applicants to fund the costs of carrying the land and to fund the development process itself. In paragraph 110 of SDAB-D-17-080, the Board found that there is no direction in the Downtown Plan that specifically prohibits a surface lot Non-accessory Parking Use on the subject site.
- [17] One goal of the Downtown Plan is to eliminate surface parking lots in the area and the Board’s decision of May 2017 was correct in furthering this goal. The SDAB-D-17-080 decision served the purpose of transferring the land out of the hands of a holding company and into the hands of a developer. Approving the proposed development for a limited period of time would serve to bring about exactly what the Downtown Plan wants which is to encourage the redevelopment of surface parking lots.
- [18] It is not appropriate to force the Appellants to landscape the site only to have to dig it up once development begins. An aerial view of the surrounding area was referenced which

shows that no development is occurring in the immediate vicinity and nothing is likely to happen on the ground in the course of the next 18 months. The requested variances cannot possibly have any negative impact on the amenities of the neighbourhood or affect the use, enjoyment or value of neighbouring parcels of land because they are all the same use.

[19] No objections have been received from any members of the public.

[20] Mr. Murphy provided the following responses to questions from the Board:

- 1) Westrich hopes to begin development of the site within 18 months but they are not ruling out the possibility that they may be before this Board in the future to ask for an extension of the interim parking use. Everything is dependent on how long the rezoning process takes.
- 2) The lease with AHS was effective October 2018 and AHS has been parking on the site despite no permit being in place.
- 3) It is unlikely that the rezoning will be refused; it is more likely that delays will be incurred. Westrich has never taken an application forward to Council without first having the support of the Edmonton Design Committee and City administration. Ms. N. Kilmartin, representing Westrich, confirmed that she spoke about the proposed DC2 development and the subject temporary surface parking lot with both the Downtown Business Association and the Downtown Edmonton Community League and neither organization expressed any objections.
- 4) Once development starts any potential contamination of the site will be dealt with because a hole will be dug and the existing dirt will be removed.

ii) *Position of the Development Officer, C. Louie*

[21] Ms. C. Louie confirmed that the 18-month application for non-accessory parking is an interim solution to allow enough time for the rezoning process to go to Council. A Council date has not been set so it is possible that 18 months will not be enough time.

[22] The site was previously approved as a temporary Non-accessory Parking lot for 10 years and continued to operate past the expiry date. An Order was issued by the City on September 8, 2016 to cease operation.

[23] The primary reason for the current refusal is “No surface parking shall be allowed, other than accessory parking that is located at the rear of a building and is accessed from the abutting alley” as per section 910.4(1)(f)(i) of the *Edmonton Zoning Bylaw*. While there is alley access to the subject site, Accessory parking does not apply as no building is located on the subject site and AHS is located quite a distance away.

- [24] There is no practical difficulty peculiar to the site that would necessitate the development of a non-accessory surface parking lot. A parking structure would be permitted.
- [25] The landscaping deficiency and location of one of the snow piles are secondary reasons for refusal.
- [26] It is Council's intention to promote development in the Warehouse Campus Neighbourhood and surface parking lots do not follow Council's directions.
- [27] Ms. Louie provided the following responses to questions from the Board:
- 1) Section 910.4(1)(f)(i) clearly prohibits non-accessory surface parking; it makes no difference if the application is for 18 months or 10 years.
 - 2) She acknowledged that it would be a detriment to put money into landscaping that may be dug up shortly afterwards.
 - 3) The issue of the snow pile can easily be resolved by moving it further east into the parking lot away from 106 Street.
 - 4) She has no comment regarding a condition stipulating that only AHS can use the site for parking; such a clause would not affect her decision.

iii) Rebuttal of the Appellant

- [28] Policies should not be applied in the same way as zoning and development regulations. Policies are aspirational and provide a vision of where the City wants to go.
- [29] The only reason the Development Officer does not like the snow pile being visible from 106 Street is due to aesthetics. The Appellants have no issue with moving the snow pile if the Board makes that direction.

Decision

- [30] 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. Approval is granted for a period of up to 18 months from **October 3, 2019**. Any operation of this site for Non-accessory Parking beyond the expiration of this permit shall require separate development approval. Upon expiration of the Development Permit, the site shall be left in a state that is satisfactory to the Development Officer.

2. Exterior lighting shall be developed to provide a safe lit environment and 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 in accordance with Sections 51 and 58 of the Edmonton Zoning Bylaw 12800 and to the satisfaction of the Development Officer.
3. Landscaping shall be in accordance to the stamped plans.
4. All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.
5. The Parking Area shall be hardsurfaced, curbed, drained and maintained in accordance with section 54.6 of the Edmonton Zoning Bylaw 12800.
6. Parking spaces less than 5.5 m in length shall be clearly signed as small car spaces and be easily located and convenient to use in accordance with section 54.2 of the Edmonton Zoning Bylaw 12800.

NOTES:

1. Signs require separate Development Applications.
 2. Upon the expiry of the temporary Non-accessory Parking lot for the period of up to 18 months, any modifications of any approved accesses will require the approval of Transportation Planning and Engineering.
- [31] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- 1) The requirement that no surface parking shall be allowed, other than accessory parking that is located at the rear of a building and is accessed from the abutting alley pursuant to section 910.4(1)(f)(i) is waived.
 - 2) The requirement that a minimum 4-metre landscaped setback shall be provided from any property line abutting a Public Roadway, other than a lane, for any surface parking area pursuant to section 910.4(1)(f)(ii) is waived.
 - 3) The requirement that the storage of materials inclusive of accumulated snow on non-accessory parking surface lots shall be in a location away from the public roadway to improve safety and visibility pursuant to section 910.4(1)(f)(iii) is waived.

Reasons for Decision

- [32] Non-accessory Parking is a Discretionary Use in the (UW) Urban Warehouse Zone pursuant to section 910.11(3)(s).
- [33] The Board concludes that there is no direction in the Capital City Downtown Plan that specifically prohibits a surface Non-accessory Parking Use on the subject Site. The Capital City Downtown Plan contains long term aspirational plans for the improvement of the Urban Warehouse district. Allowing this development for 18 months will not negatively affect these long term aspirational aspects.
- [34] This is an area in transition and the proposed development is reasonably compatible with the surrounding Uses which are also surface parking lots; these Uses will not change during the next 18 months. The Board notes that construction of the proposed Warehouse Campus Neighbourhood Central Park across 106 Street to the west is not projected to begin until 2022 or 2023.
- [35] A rezoning application for the subject Site has been submitted to the City of Edmonton by the Applicant. Approving the permit for 18 months allows for an interim Use of the Site until the zoning required for redevelopment is in place. If the rezoning has not been completed in this time the Applicant would be required to apply for a new Development Permit.
- [36] It is the Board's decision that the landscaping plan and the snow pile locations as proposed in the application are acceptable and based on photographic evidence the Board finds that the landscaping plan is characteristic of the neighbouring surface parking lots.
- [37] No one submitted any written objections to the proposed development and no one appeared in opposition at the hearing. The Applicant had discussions with the Edmonton Downtown Community League and the Downtown Business Association and no objections were received from either of these organizations.
- [38] The Board finds that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and 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.



B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

S. LaPerle, A. Bolstad, S. McCartney, M. Young

cc: City of Edmonton, Development & Zoning Services, Attn. C. Louie / H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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