



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 11, 2018
Project Number: 254856236-001
File Number: SDAB-D-18-157

Notice of Decision

- [1] On September 27, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 23, 2018. The appeal concerned the decision of the Development Authority, issued on August 22, 2018 to refuse the following development:

To construct an Apartment House with 14 Dwellings

- [2] The subject property is on Plan 2060Q Blk 168 Lot 6, located at 10720 - 78 Avenue NW and Plan 2060Q Blk 168 Lot 7, located at 10722 - 78 Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Garneau Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - One letter in opposition.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Additional Submission from the Appellant
 - Exhibit B – Photograph of the proposed rendering, submitted by the Appellant.

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 (the “*Municipal Government Act*”).

Summary of Hearing

- i) *Position of the Appellant, Mr. Prins, representing Maltby & Prins Architects, who was accompanied by Mr. Frost*

- [8] The proposed development was designed in keeping with the characteristics of the neighbourhood.
- [9] The proposed parking spaces will be sufficient for the proposed development as not all of the tenants will have vehicles.
- [10] The units are small studio units and would not be suitable for families.
- [11] The proposed development complies with the setback and square footage requirements and the main issue is the proposed development has an excess in the number of required units allowed in the *Edmonton Zoning Bylaw*.
- [12] They met with City Departments to discuss landscaping and garbage disposal which complies with the regulations in the *Edmonton Zoning Bylaw*.
- [13] The building is designed to fit in with the streetscape. The front of each unit will be finished with different colors giving each unit some individuality.
- [14] Mr. Frost stated that the proposed site is just shy of being able to be classified as a transit oriented development. In their opinion, if the building was closer to the Avenue they would only need 10 parking spaces. In their opinion, all of the 14 parking spaces will not be utilized.
- [15] The proposed development fits in the allowable building pocket for the front and side setbacks and building height.
- [16] Mr. Prins and Mr. Frost provided the following information in response to questions by the Board:
- a. Tenants of the units will be for students and possibly seniors as this will be a low income property.
 - b. Access to the three floors of the building will be from stairs.
 - c. Balconies will provide addition space for the small units. Privacy screening will separate each balcony. The balconies will not overlook another unit.

- d. There will be fencing and landscaping around the entire property.
- e. Access to the four main floor units can be from the main entrance or the patio units. Two of the main floor units have their own yard space.
- f. The fenced amenity area can be used by all of the tenants.
- g. They intend to sell the units with the option to rent if needed.
- h. The building was designed for 14 units instead of 10 as there is room on the property to allow for this type of development.
- i. The patio railing meets the required building code.
- j. The balconies on the front units will face Ronald McDonald House and the rear balconies will face the rear lane and residential properties. The glass on the balconies will be frosted and trees at the rear of the property will provide additional privacy.
- k. With regard to the Area Redevelopment Plan (ARP), Mr. Prins stated that the building is designed for smaller economical units. They want affordable units and by building 14 units, they will be affordable.

ii) Position of the Development Officer, Mr. Yeung

[17] Mr. Yeung provided the following information in response to questions by the Board:

- a. In his opinion, the building is in close proximity to the University of Alberta and the units will be affordable for students.
- b. The Policy Objectives for Low Rise Apartment Housing is to support non-family oriented or medium density residential developments that front onto major arterial roadway and is separated from adjacent residential development by laneways.
- c. Although the units are small, families could live in the units as the property will be fenced.
- d. A 6 foot fence will exceed the allowable height at the front of the property but a 4 foot fence would be allowable.
- e. The proposed development was circulated to Transportation who did not have an objection with the deficiency in visitor parking spaces.
- f. Concerns were received from the Community Consultation regarding the deficiency of one visitor parking space which could result in an increase of on-street parking in the neighbourhood.

- g. The intent of the Garneau ARP is to reduce building mass along the facades. He agrees that the balconies will allow more space for tenants.
- h. The application would need to be reviewed to allow a 6 foot high fence.
- i. He does not have demographic statistics to confirm the housing market in the University area. However, he does agree that units could be used by students as the proposed development is in close proximity to the University of Alberta.
- j. Allowing 14 units will have an impact on the number of required parking spaces with a deficiency of one visitor parking space.
- k. The intent is to increase density and residential uses in neighbourhood.
- l. The existing footprint would not change even if the size of the units was increased. This could reduce the number of required parking spaces.
- m. There would not be a change in density if the building was oriented differently.
- n. He confirmed that the proposed development complies with all of the setbacks.
- o. He agreed that privacy screening will mitigate any privacy issues from other units. There is additional space from the rear balconies to the rear property line.

iii) Position of Ms. Winkler, affected Property Owner in Opposition of the Appellant

- [18] She and her family own three houses within the 60 metres notification radius. She has lived in this area for over 12 years.
- [19] She has two children, bikes to work, and walks to the stores in the neighbourhood. There are only a few children in the neighbourhood even though there is a school, swimming pool, and grocery stores in the neighborhood.
- [20] She has not been contacted by the developer regarding the proposed development.
- [21] There are parking issues in the area as Ronald McDonald House is across the street from the subject Site.
- [22] The proposed development will eliminate two houses that are in disrepair but does not feel the development will enhance the community.
- [23] In her opinion, the proposed development should be diverse housing. The units will be used by single students who would not likely invest in the community.
- [24] They use their back yard regularly and feel the proposed development will negatively impact their privacy.

[25] Ms. Winkler provided the following information in response to questions by the Board:

- a. There is one large tree in the rear lane but she could not confirm if the city owns it or if a resident owns it. There is no other vegetation along the rear lane.
- b. She confirmed there are trees in the front and back yards of residential properties but not in the rear lane as shown in the aerial photograph.
- c. She believes trees on the subject site will be removed to develop the building.
- d. Trees will be removed to build the development. There are pine trees that look unhealthy that will need to be removed.
- e. In her opinion, privacy from the balconies will be screened only by the one large tree in the rear lane.
- f. She is not as concerned about the balconies as much as the density.
- g. In her opinion, the building will not be suitable for families as the units are too small. The fenced around the property will not help families potentially living in the building.
- h. In her opinion, the increase in density will have a negative impact on the neighbourhood as there are other projects being developed. In her opinion, other types of developments could be built to accommodate families that would not increase traffic and parking in the area.
- i. In her opinion, the proposed development will not be suitable for seniors.
- j. In her opinion, if the proposed development is approved, builders will always apply for more than what is allowed in the *Edmonton Zoning Bylaw*.
- k. The development is not removing amenities but providing less access to those amenities.
- l. She is aware that developments are changing with the ARP.

iv) Rebuttal of the Appellant, Mr. Prins

[26] The development was designed in keeping with the characteristics of the neighbourhood.

[27] In his opinion, the proposed development will not negatively impact the neighbourhood.

[28] He is agreeable to conditions suggested by the Development Officer some of which are standard in the *Edmonton Zoning Bylaw*.

[29] He would like the fence in the front to be built at 6 feet high.

[30] Mr. Prins stated that the proposed fence is not on the landscaping plan but there is a proposed plan for a 6 feet, 6 inch high fence that was refused.

Decision

[31] 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** and **ADVISEMENTS** as proposed by the Development Authority and reviewed by the Appellants:

1. The development shall be constructed in accordance with the stamped and approved drawings, as revised, to show a fence (up to 1.85 metres in Height), its location highlighted in yellow. (ENCLOSURE 1)
2. Within 14 days of approval, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).
3. The maximum Height shall not exceed 16.0 metres, in accordance with Section 52 of the *Edmonton Zoning Bylaw*.
4. Amenity Area shall be provided in accordance with Section 46 of the *Edmonton Zoning Bylaw*.
5. 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(1)(c))
6. 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).
7. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$1,118/Dwelling. The SSTC charge is quoted at year 2018 rate. Please contact Private Development, Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor, Edmonton Tower, 10111 104 Avenue NW, Edmonton AB T5J 0J4.
8. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Lot Grading Fee of \$341.00.

LANDSCAPE CONDITIONS:

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Development Permit Inspection Fee of \$510.00.
2. Landscaping shall be in accordance with the approved landscaping plan and Section 55 of the *Edmonton Zoning Bylaw*, to the satisfaction of the Development Officer.
3. Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.
4. Landscaping shall be maintained in a healthy condition for a minimum of 24 months after the landscaping has been installed, to the satisfaction of the Development Officer.
5. A Guaranteed Landscaping Security shall be provided to the City of Edmonton at the time of Development Permit Inspection, to the satisfaction of the Development Officer.

TRANSPORTATION CONDITIONS:

1. The proposed connector sidewalks (3 total) from the south property line of the subject site to tie into the City sidewalk on the north side of 78 Avenue, as shown on the Enclosure II, are acceptable to Subdivision Planning.
2. A 200 mm thick concrete pad must be constructed between the edge of the alley asphalt and the back of the garbage enclosure to provide an adequate base that will withstand the weight of the waste management vehicle when loading, as shown on the Enclosure II.
3. All required landscaping for the development must be provided on site, as shown on the Enclosure II.
4. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

5. There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant. Please contact Bonnie Fermanuik at City Operations, Parks & Roads Services (780-496-4960).
6. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as shown on the Enclosure II.
7. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required;
 - and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.
 - It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/transportation/on_your_streets/on-streetconstruction-maintenance-permit.aspx
8. Any alley, sidewalk, or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. All expenses incurred for repair are to be borne by the owner.

ADVISEMENTS:

1. Residential Sales Trailers require a separate development permit. Construction trailers must be located on private property or within the hoarded area.
2. Subdivision Planning does not object to the proposed parking deficiency of 1 stall (provided 14 stalls; required 15 stalls). There is on-street parking available along the north side of 78 Avenue.
3. Upon the first Development Permit Inspection and determination that landscape construction has been completed in compliance with the approved Landscape Plan, 20% of the approved Guaranteed Landscape Security shall be collected and retained for a period of 24 months from the date of first Development Permit Inspection.

4. Sites that are not completed or are not compliant with approved Landscape Plans at the first Development Permit Inspection, shall be required to submit a Security for incomplete work, up to and including the full value of the approved Guaranteed Landscape Security value.
5. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
6. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
7. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.
8. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

1. The maximum allowable number of Dwellings of 10 as per Section 210.4(2)(a) is varied to allow an excess of 4 Dwellings, thereby increasing the maximum allowable to 14 Dwellings.
2. The maximum length of balconies as per Section 823.4(2)(j) is waived.
3. The minimum number of visitor Parking Spaces of 1 as per Section 54.2, Schedule 1(A)(1) is varied to allow a deficiency of 1 Parking Space, thereby decreasing the minimum allowable to 0 visitor Parking Spaces.
4. The maximum allowable Fence Height of 1.20 metres as per section 49 is varied to allow an excess of 0.65 metres, thereby increasing the maximum allowable to 1.85 metres (only where shown on the stamped approved plans).

Reasons for Decision

[33] The proposed development, an Apartment House is a Permitted Use in the RA7 Low Rise Apartment Zone.

[34] The Board finds the requirement for community consultation pursuant to Section 823.6 of the Medium Scale Residential Infill Overlay have been complied with.

[35] The Board grants the variance in Density for the following reasons:

- a. The proposed development is in Sub Area 1 of the Garneau Area Redevelopment Plan (ARP) that stipulates this particular area is suited for Medium Scale Infill Developments.
- b. When analyzing the increase in Density from 10 to 14 units, the Board must reach a conclusion on whether or not the increase of 4 units would have a material impact on neighbouring properties. The Board finds that the dwelling meets every Setback, including Height, and the development could be larger than what is proposed.
- c. The proposed development provides a diverse housing choice as well as allowing for a more choice of housing affordability and this type of development helps meet the goals of the ARP.
- d. While this design to increase the number of family dwellings within a Sub Area does not contemplate the adherence to that goal in the ARP, the Board finds that the change in the neighbourhood and resident demographics justifies the increase in density. It also meets several objectives set out in the ARP as well, namely to redevelop a site that its current structures are dilapidated, accommodate a demand for housing and encourages a mix of unit types.
- e. Through a redesign, the number of dwelling units could adhere to the density requirement of 10 and still have the same number of residents or users depending on the unit designs. Therefore, the Board has concluded that this design will not increase the intensity significantly enough that it would have a material impact on the neighbourhood.
- f. The size, scale, and massing fully comply with the regulations of the *Edmonton Zoning Bylaw*.

[36] The Board grants the variance of one visitor parking space for the following reasons:

- a. With the location of the development in close proximity to the University area, the size of the units, and the tenants who will tend to use public transportation rather than owning a vehicle, the Board accepts that not all 14 parking spaces would be used at all times.
- b. Transportation Services indicated they had no issue to the variance of one visitor parking space.

[37] The Board grants the variance of the length of balconies for the following reasons:

- a. The Board supports the evidence from the Architect that the area of the balcony will enhance the visual form, the streetscape, and articulation as part of this type of development. The balconies look onto the Avenue and the lane and are setback from the lane which will help mitigate overlook and privacy concerns.

- b. Privacy screening, as part of the design, will be added to the balconies to mitigate privacy concerns.

[38] The Board grants the variance in Fence Height for the following reasons:

- a. The Board accepts the evidence from the Architect that an overheight fence will allow for private amenity space for the two main floor units that have access only to the front yard.
- b. Based on the drawings submitted, the fence will add and enhance the visual appeal of the development through the use of the materials proposed.
- c. The fence will enhance the safety of this area which may allow for a diverse type of resident which may include seniors and possibly children.
- d. Section 49 provides variances power to increase the Fence Height in order to provide additional screening from public roadways or incompatible adjacent Uses. The Board finds that this is an appropriate use of its variance powers.

[39] 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, and 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; Mr. A. Bolstad; Mr. R. Hachigian; Ms. M. McCallum

Enclosures I and II

c.c. City of Edmonton, Development & Zoning Services, Attn: Mr. K. Yeung / Mr. A. Wen

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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Date: October 11, 2018
Project Number: 282370794-001
File Number: SDAB-D-18-158

Notice of Decision

- [1] On September 27, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 28, 2018. The appeal concerned the decision of the Development Authority, issued on August 8, 2018, to refuse the following development:

To expand an existing Child Care Service from 25 children to 67 children in an existing Religious Assembly and to construct interior alterations (movable walls on basement floor)

- [2] The subject property is on Plan 8036ET Blk 135 Lot E, located at 10721 - 86 Avenue NW and Plan 8036ET Blk 135 Lot D, located at 10721 - 86 Avenue NW and Plan 3901AJ Blk 135 Lots 29-30, located at 10721 - 86 Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Garneau Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- Online responses; and
- Submission from a neighbouring property owner.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) *Position of Mr. Szoke, representing the Appellant, ERA Construction Ltd., who was accompanied by Mr. Ahmed, representing the Child Care Service*

[7] They are representing the Muslim Community of Edmonton Mosque.

[8] They would like to provide alternate options for the Board to consider from the original application.

[9] Mr. Szoke is one of the consultants and owns a small construction company. His client, Mr. Ahmed is a co-owner of the Child Care Service.

[10] Previously there were three issues for the proposed development:

1. An on-site parking deficiency;
2. A drop off zone on the front street;
3. Potential noise with the number of proposed children.

[11] They are willing to reduce the number of children to address the parking and noise concerns.

[12] Parking is an issue with the community as found in the on-line feedback and consultations with the neighbourhood and City departments. There is a parking issue in the area due to the number of people parking in the area and go to the University.

[13] In their opinion, the Child Care Service and the Religious Assembly do not operate at the same time which would not create an issue and feels there is not a parking problem for the child care service.

[14] There has been ongoing discussion with City departments regarding parking.

[15] The Religious Assembly operates between 12:00 p.m. and 3:30 p.m. on Fridays which is the peak time of activity. There is always a parking space available during this time. However, there is not a lot of on-street parking.

[16] Parking will not affect the operation of the Child Care Services.

[17] They applied for a drop off zone in the front of the Religious Assembly which was not approved. However, they could modify the existing parking lot to accommodate a drop off zone or in the rear lane where there is little or no impact on the community.

- [18] They spoke to an adjacent property owner who did not have a concern with noise from the existing Child Care Service (for 25 children) but if 67 children were approved, they may have a concern. Neighbours indicated that on-street parking could be an issue.
- [19] They would be willing to reduce the number of children from 67 to 32 children. Additional staff and parking requirements would not be needed. The current number of children allows for two groups to play outside during the day. One group has 16 children and one has 9 children. Having 32 children will not increase the number of play groups.
- [20] The maximum age of the children is five years old.
- [21] Another option would be to allow for 48 children. This would be a maximum capacity of the upstairs room and no additional parking required. However, 1 or 2 leased parking spaces may be utilized.
- [22] In their opinion, the options suggested would address any concerns of the neighbourhood.
- [23] They referred to one letter in support of the proposed development.
- [24] They referred to a parking contract that is currently in place with the Religious Assembly.
- [25] Mr. Ahmed stated that the busy hours for the Religious Assembly are different than the hours of the Child Care Service.
- [26] Children can be dropped off from 7:00 a.m. to 10:30 a.m. and parents cannot drop off children after this time. Parents pick up children between 4:00 p.m. to 6:00 p.m.
- [27] The Religious Assembly is a non-profit organization. They received a request from a community member for additional spaces for children. There is a waiting list for children to attend the Child Care Service.
- [28] There is one drop off space in the front of the building and two in the back by the back doors where the majority of children are dropped off.
- [29] Mr. Szoke provided the following information in response to questions by the Board:
- a. The original application was for 67 children which was based on the capacity of each room in the building.
 - b. The two options for the number of children is based on the existing rooms that will not be used to full capacity.
 - c. For 32 children, there will be two groups of 16 children which will have no impact on parking.
 - d. 48 children is the maximum number of children allowed in the three rooms upstairs.

- e. Three rooms upstairs can hold up to 16 children each. One room will only have 16 children and one room will have 9 children.
- f. A full room of 16 children will need two employees.
- g. The Religious Assembly School only runs on Saturdays and Sundays from 10:00 a.m. to 12:00 p.m.
- h. They have not done a parking study for the traffic using the rear lane.
- i. The rear lane is a high traffic area as there are several apartment buildings that access the rear lane.
- j. The majority of parents walk their children to the Child Care Service and only one employee drives to the site.
- k. The existing play area does not utilize the side of the building between the east neighbour and the building. Occasionally the Religious Assembly uses this area. They intend to work with the neighbour to address any concerns they may have with the play area.
- l. Currently, the play area has a capacity for 16 children. There will only be two groups of children at a time using the outdoor play area.
- m. If the Child Care Service is approved for 48 children, there will be a change to the timing and number of groups going out to play. They will address any noise concerns.
- n. The side access will be reduced to emergency access only which will address any privacy concerns.
- o. They spoke to a neighbouring property owner regarding the proposed 67 children. They could not confirm if the neighbours would still be opposed if the number of children were reduced.
- p. Children using the daycare are from the community. However, children coming to the Religious Assembly on the weekend are also from outside the community.
- q. Neighbouring property owners were opposed to utilizing the space for a play area on the northeast side of the building.
- r. They referred to the orientation of the building showing where children access the building and the play area. Parents and children can use the front door or rear doors.
- s. They would be willing to build a wooden fence around the play area to mitigate privacy issues.

- t. They have a contract with a resident east of the subject Site where they can use the back yard for parking. They were not aware that this is not allowed.
- u. There is a waiting list for the Child Care Service and they feel this service should be provided to the Community. Reducing the number of children will reduce the impact on the community.
- v. They are willing to find an alternate location for the drop off space to address any concerns.
- w. They were not aware of any traffic issues and they do not believe there is a traffic issue in the rear lane.
- x. Mr. Ahmed confirmed that there is no impact from the Child Care Service when the Religious Assembly is being used.
- y. In their opinion, any traffic issue is not generated by the Child Care Service.
- z. Mr. Ahmed believes the building will be sufficient for the needs of the Child Care Service in the future.

ii) *Position of the Development Officer, Ms. Xu, who was accompanied by Mr. Welch and Mr. Murphy, representing Parking and Roads Services*

- [30] Mr. Welch stated that the proposed development is a Discretionary Use in the RA7 Low Rise Apartment Zone.
- [31] They are not prepared to review the proposed application for a reduction in the number of children for the Child Care Service
- [32] The increase of the number of children will negatively impact the neighbourhood.
- [33] The requirement for off-street vehicular accessory parking is governed by Section 54.2(2) of the *Edmonton Zoning Bylaw*. They cannot use parking from another site that does not have enough parking of their own.
- [34] The Granite Club in the area has parking issues as well and cannot provide parking for the Religious Assembly.
- [35] Mr. Murphy referred to a photograph showing the area along 86 Avenue. When a development permit is reviewed, they look at the parking in the area. There is a parking ban on the north side of 86 Avenue between 107 and 108 Street. There was a parking issue in this area so the parking ban was implemented.

- [36] There are approximately more than 20 parking spaces for the whole block. Parking is a premium with people having more than one vehicle.
- [37] They do not support the parking variance for the business.
- [38] Mr. Welch, Ms. Xu, and Mr. Murphy provided the following information in response to questions by the Board:
- a. The original application was for 67 children which was based on the capacity of each room in the building.
 - b. The Child Care Service is renting five parking spaces from a resident east of the subject Site which is not allowed. They could not use parking at the Granite Club as this facility already has parking issues. The majority of properties in the area have parking issues and cannot accommodate space for others.
 - c. The entire area is RA7 Low Rise Apartment Zone. Section 54.2(2) will allow for off-site off-street parking but depending on the requirements for their own needs. Using other properties for parking is not allowed.
 - d. If they are required to do an occupant parking study, they walk the block every hour recording the number of vehicles in the area. In this case, they look at the area and take photographs during different times of the day.
 - e. They are more concerned about the City right-of-way and on-street parking. If they are using their on-site parking, it is their site they can use it how they want.
 - f. They have not reviewed the traffic in the rear lane. Rear lanes are used to accommodate deliveries in and out of the neighbourhood. However, if there is a complaint, they will look into it. They have never received a complaint.
 - g. They confirmed that there is a deficiency of 15 parking spaces.
 - h. When applying the ARP, the proposed development will have a negative impact on the residential Use.
 - i. Expanding the Child Care Service at this location will not be in with alignment with the objectives in the area. Parking issues are a concern.
 - j. They are not opposed to the current operation of the Child Care Service. The use has not changed but only the capacity.
 - k. They are not aware of any complaints received regarding the Religious Assembly.

iii) Position of Mr. Dunlop, an affected Property Owner in Opposition of the Appellant.

- [39] He and his wife live on the east side of the subject Site.
- [40] He is on the executive committee of the Garneau Community League.
- [41] The Religious Assembly has been a good neighbour.
- [42] He is opposed to the increase in the number of children for the Child Care Service.
- [43] He is concerned with the noise level from 67 children.
- [44] Parking has always been an issue in the area. Several University students park on the street in this area.
- [45] There is no drop off space for the Child Care Service with the increase in children.
- [46] Their house is adjacent to the entrance of the outdoor play area.
- [47] He referred to the SDAB Decision in 2007 that was provided to the Board regarding the addition to a Religious Assembly.
- [48] The approved plan showed privacy screening on the east side of the Religious Assembly.
- [49] The increase in the number of children will increase the noise level on the east side of the play area.
- [50] In his opinion, the play area cannot accommodate that many children.
- [51] In his opinion, the building is not adequate for the Child Care Services.

iv) Rebuttal of the Appellant

- [52] The Child Care Service is important as the other Child Care Services in the area are full.
- [53] Mr. Szoke stated that the Child Care Service is a non-profit organization that may have been referred to as a profit business.
- [54] In his opinion, parking is not an issue as he has never had to park on the street when he visits the site.
- [55] They are willing to work with neighbouring property owners to address any privacy concerns.

Decision

- [56] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [57] The proposed development is a Discretionary Use in the RA7 Low Rise Apartment Zone.
- [58] In July 2012, an application to operate a Childcare Service (25 Children, 2 Staff, Age:3-4.5 yrs.) within a Religious Assembly use building (hour of operations: Monday to Thursday from 9:00 am till 3:00 pm), was approved by the Development Authority.
- [59] The Board was asked to consider an application to expand an existing Child Care Service from 25 children to 67 children in an existing Religious Assembly and to construct interior alterations (movable walls on basement floor).
- [60] When considering the application, the Board reviewed in detail how the increase in children from 25 to 67 would increase the intensity of the Use of the building, parking, traffic, and noise. It also considered the other activities of the Religious Assembly in its' review.
- [61] Based on the evidence submitted, the Board supports the calculation by the Development Officer that the addition of 42 children will create a deficiency of 15 parking spaces which is not supported by the City of Edmonton, Parks and Roads Service.
- [62] Based on the evidence submitted, the Board finds that there is restricted parking on the north side of the Avenue which limits the number of off-street parking at the outset.
- [63] Based on evidence presented, the Board heard that there are three apartments, two condominiums, the Granite Curling Club, and the Religious Assembly located on this Avenue and rear lane which already creates traffic congestion in this neighbourhood.
- [64] The Board referred to the previous development permit approving a Child Care Service for 25 children with the hours of operation Monday to Thursday from 9:00 a.m. to 3:00 p.m. This application extends the hours of operation from Monday to Friday from 6:00 a.m. to 6:00 p.m. This increase of hours and days of operation intensifies traffic, parking, and noise concerns raised by the neighbourhood.
- [65] The Board heard evidence through neighbouring property owners and on-line submissions that there are traffic concerns with the numbers of vehicles using the rear lane. Vehicle access for the apartments and condominiums is off the lane.

- [66] The Board accepts the evidence submitted from the most affected adjacent property owner east of the subject Site that the increase in the number of children will increase noise level and activity in the play area adjacent to their property.
- [67] The Board was presented with parking options on other lots or sites in the immediate vicinity for the Child Care Service. However, they cannot accept those options as there is no evidence that those are legal parking spaces.
- [68] The Board was asked to consider reducing the number of children for this development permit application. The Appellant presented two different options in order to address the variances and the concerns of the neighbourhood. The Development Officer was not prepared to review alternate options at this time. The Board supports the Development Officer's decision and requires further information for them to consider a reduced number of children for this application. Therefore, the Board dealt with the original development permit as applied for to the Development Officer.
- [69] 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 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; Mr. A. Bolstad; Mr. R. Hachigian; Ms. M. McCallum

c.c. City of Edmonton, Development & Zoning Services, Attn: Ms. H. Xu / Mr. A. Wen /
Mr. Welch
City of Edmonton, Parking and Roads Services, Attn: Mr. Murphy

Important Information for the 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*, 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.
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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.