



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: September 27, 2016  
Project Number: 186484308-002  
File Number: SDAB-D-16-220

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on July 28, 2016, made and passed the following motion:

"That the appeal hearing be scheduled for September 7 or 8, 2016."

- [2] On September 8, 2016, the Board made and passed the following motion:

"That SDAB-D-16-220 be raised from the table."

- [3] On September 8, 2016, the Board heard appeals that were filed between **July 25, 2016 and July 27, 2016**. The appeals concerned the decision of the Development Authority, issued on July 8, 2016, to approve the following development:

**To convert an existing Single Detached House to Child Care Services and to construct interior and exterior alterations (120 children occupancy)**

- [4] The subject property is on Plan RN39B Blk 47 Lots 19-20, located at 12520 - 110 Avenue NW, within the DC1 Direct Development Control Provision Zone. The West Ingle Area Redevelopment Plan applies to the subject property.

- [5] 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 approved Development Permit;
- The Development Officer's written submissions;
- The Appellants' written submissions;
- The Respondent's written submissions; and
- Online responses.

[6] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Photographs
- Exhibit B – Traffic counts
- Exhibit C – Attachment 1 of Bylaw amendment to Child Care Services
- Exhibit D – Letter of opposition
- Exhibit E – Revised Plan
- Exhibit F – Revised Plan
- Exhibit G – Revised Plan
- Exhibit H – Email from Transportation
- Exhibit I – Email to Development Officer
- Exhibit J - Photographs
- Exhibit K - Photographs

### **Preliminary Matters**

[7] The Presiding Officer advised that Mr. Colistro had previously been the Chairman of the Board and had left approximately one and one-half years ago. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[9] The Development Officer advised that the approved Development Permit was advertised in the newspaper on July 14. Accordingly, the 14-day appeal period expired on July 28. The Board determined that, since the appeals were filed between July 25 and July 27, they were filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “MGA”).

[10] The Presiding Officer explained to the parties that this site is zoned DC1 Direct Development Control District for the Westmount Architectural Heritage Area pursuant to Bylaw 11421 passed February 10, 1997 (“DC1”). City Council has taken special control of the site. The Board’s authority is limited under Section 641(4)(b) of the *MGA*, which states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district, is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

Parties must make submissions to the Board with regards to how the Development Officer did or did not follow the directions of Council.

- [11] Mr. Colistro, legal counsel for the Respondent, asked the Presiding Officer if the Board would first be making a determination whether the Development Officer did or did not follow the directions of Council and then ask for evidence on the merits of the appeal if warranted. Mr. Colistro only wanted to submit some revised plans if the Board first determined the Development Officer did not follow the directions of Council. The Presiding Officer indicated the Board would consider all the evidence before it decided whether the Development Officer followed the directions of Council. He suggested that Mr. Colistro could present his submissions in the alternative.
- [12] The five Appellants indicated that they have divided up their presentations so each individual is addressing a different part of the appeal.

## **Summary of Hearing**

### *i) Position of the Appellants*

#### **Ms. E. Kucher**

- [13] Ms. Kucher stated the number of people attending the hearing today is a good indication about the concern the neighbourhood has about the Development Permit.
- [14] She filed an appeal because a commercial size Child Care facility is being allowed in this residential area.
- [15] She started canvassing the neighbourhood, especially in the 120-metre notification radius. People who signed the petition were concerned and surprised about the size of the Child Care Service. She included a map indicating all the residents who signed the petition. The community acknowledges the need for a daycare, but does not support the size approved. She included 18 letters of opposition in her submission. She has 104 signatures in opposition on her petition. This represents 70 homes, 53 of which are in the 120-metre notification radius. Two homes originally in support of the Child Care have since signed the other petition against the Child Care. In Ms. Kucher's opinion, the community engagement was not adequate in this case.
- [16] In response to questioning from the Board, Ms. Kucher indicated that she did speak to the Respondent regarding reducing the capacity of the Child Care Service to around 40 children. The Respondent indicated this was not feasible. They were willing to go down to 110 children and the first year could be capped at 80 children.

[17] In response to questioning from the Board, Ms. Kucher indicated the Development Officer did not follow the directions of Council as the intent of the bylaw was not for a commercial size Child Care in a residential neighbourhood.

**Mr. R. Brown**

[18] Mr. Brown provided a history of the site. The property was first developed as a Unitarian Church, with a Sunday school for 100 children, but less than half that number attended. Then Montessori leased some space for a day care around 1963 with a license for 60 children, but they never had more than 40 children. In 1997, they asked for a reduction in rent. In Mr. Brown's opinion, the history of the site did not play as huge a role as the Respondents presented in their submission.

[19] In 2004, the building was converted to a private home. The owner applied in 2005 to have the zoning changed to DC2 in order to allow for a commercial development. This was rejected by the Sustainable Development Department because it did not meet the West Ingle Area Redevelopment Plan, which limits commercial development, and because it was not compatible with surrounding developments.

[20] Child Care Services is allowed as a Use under this DC1. However, the intent and the spirit of the Bylaw was preservation of the historical area.

[21] Mr. Brown stated that Council intended this Child Care Services Use to continue at a limited size. A Major Home Based Business would have been less invasive.

[22] The development is 7000 square feet in size, while the average size of house in the neighbourhood is 1500 square feet. The proposed development is much larger compared to other residential Child Care Services. Council never intended a Child Care of this size because this building is very unusual.

[23] Mr. Brown stated that currently the property is not a church or Child Care, but a residential house.

[24] A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered.

[25] Mr. Brown reiterated that Council never intended a placement of such a large Child Care Services in a low density area.

[26] The new Bylaw made changes to a Child Care's locational criteria. When Child Care Services Use is proposed as part of a Dwelling, it needs to be located on a corner lot not mid-block. This was done to ensure small Child Care Services in private homes in low density residential caused less of a disruption. It is reasonable to assume then if Council's intent was to minimize disruption, then it would not allow a development of this size.

- [27] Mr. Brown contacted 120 daycares. He discovered the average size is 50 children. There are few facilities of this size in the whole city much less residential areas. The shortage of child care is not evident. One third of Child Care facilities are operating below capacity. One cause could be a labour shortage.
- [28] It was Mr. Brown's opinion that the Development Officer did not have enough information to follow the directions of Council.
- [29] Child Care Services are not distributed well over the City. But the Westmount area is well served already.
- [30] It was not Council's intent to allow this Child Care and bring a huge amount of traffic into the area.
- [31] For example, the Blatchford Special Area allows Child Care Services on active streets, which is a defined term. Thus, when Council had an opportunity to plan Child Care Services from the beginning, they were situated away from residential areas.
- [32] The Respondent has not provided data to indicate the proposed development will not bring in 200 vehicles per day and serve mostly local individuals. There was no traffic study or proper consultation.
- [33] Upon questioning from the Board, Mr. Brown conceded there is no cap in the *Edmonton Zoning Bylaw* with respect to the number of children. However, it can be inferred that Council did not intend a daycare this large.
- [34] The Board asked whether the walkability of the area and its close proximity to the transit corridor on 124 Street would alleviate any of the neighbours' concerns. Mr. Brown suggested there is some walkability, but not in the winter months.

**Mr. R. McCann and Ms. A. Piccinin**

- [35] The Development Officer was not presented with full information. The Development Officer was unaware about the garage being converted into a classroom, which would require a different permit.
- [36] Transportation Services did not do their due diligence. No traffic study was conducted. Ms. Piccinin anticipated an extra 90 vehicles per hour. Many people cut through the neighbourhood at peaks times. An independent study should be conducted. The Presiding Officer was under the impression that the Appellants asked for a tabling to conduct a traffic study. The Appellants stated that they conducted their own traffic study.

- [37] There are fewer parking stalls available in front of the property than claimed by the Respondents. The parking dimensions used were inaccurate. The Respondent provided data and this data was erroneously relied upon by Transportation Services. Residential parking spaces should not be used for commercial enterprises.
- [38] City Council may have intended on-street parking. However, they could not have intended the entire 13 spaces. A lot of residential parking has already been lost because of over use by people visiting commercial areas.
- [39] The building has non-conforming status because its Site Coverage is at 48 percent. The extra 8 percent is for the attached garage conversion.
- [40] There are safety issues for the community and children of the Child Care. There have been fatalities at 127 Street and 111 Avenue.
- [41] No handicap parking space has been provided.
- [42] The Child Care intends to serve eight to ten schools which will require buses. There will also be field trips.
- [43] The proposed children will come from elsewhere because Westmount does not have that much demand for Child Care.
- [44] She provided a letter from a surrounding property owner who is an avid bike rider who does not bike in the winter.
- [45] There are issues regarding staff parking. They cannot expect 20 staff to park in the eight onsite spaces.
- [46] It has been claimed that the Community League is not taking position on the proposed development but they are open to speaking about parking. However, the minutes from the Community League meeting do not support this. The Community League Bylaw does not allow for shared parking and the *Edmonton Zoning Bylaw* does not allow for such remote parking. Plus there is a question of liability should there be an accident on Community League property.
- [47] She questioned why Waste Management only requires the addition of only a few garbage cans. Any further garbage area can only come at the expense of the employee parking lot.
- [48] She submitted Exhibit A, a series of pictures of 125 Street, which shows the parking congestion in the area. She supplied a density map indicating the number of families, condos, senior homes, commercial developments, etc. within 150 metres of the proposed development, which explains why traffic is so congested.

- [49] She submitted pictures near the YMCA Child Care by Westglen School which is two blocks away. She took pictures prior to the start of school (around 7:40 am). There are several cars parked on the street. That Child Care has a maximum of 60 kids attending.
- [50] 127 Street is one way and at 128 Street there is no turn around. People from 124 Street shortcut to 126 Street and 125 Street.
- [51] The streets in the area are already congested because of the commercial development, which significantly impacts parking on the streets.

**Ms. S. Curry**

- [52] Ms. Curry would like to speak about the historical aspect of the area, which would be impacted by this proposed development. The area is a highly valued mature neighbourhood and also very desirable for developments.
- [53] The historical guidelines are voluntary. There is a working committee in place to design homes with a historical element.
- [54] This application would allow commercial development.
- [55] The main objections are the large capacity and the large variance to the number of parking spaces allowed on the street.
- [56] The area is comprised of distinctive homes of varying size and situated in tree-lined areas.
- [57] No large scale commercial developments have been allowed in this area.
- [58] This development would not preserve the historical structure of the neighbourhood which the West Ingle Area Redevelopment Plan was implemented to protect.
- [59] The Board asked how the historical character of the neighbourhood would be impacted as there would be no changes to the outside of the building and the City's Historical Officer did not have any concerns. Ms. Curry conceded that there will not be major changes, but the Board must be concerned about the historical context within which this commercial enterprise is occurring.

**Mr. M. Stephen**

- [60] Mr. Stephen lives across the street from the proposed development and asked the Board to review the submission he provided at the hearing.
- [61] He believes the intention of City Council is not being met.
- [62] When the bylaw was changed, parking was moved out to a separate section of the Bylaw.

- [63] The building is non-conforming in terms of Site Coverage, Setbacks and the interior courtyard. The Respondents are proposing exterior and interior changes. In his opinion, the conversion of the attached garage into usable space is a major change. A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered. The Development Officer was unaware of the changes to the garage. With the proposed alterations, the Respondent would be required to convert the building back into compliance.
- [64] Parking variances were allowed on the basis of Transportation Service's approval. A traffic study was not conducted. It is unclear if a study is required. Transportation Services relied solely on the Respondent's information, which is self-serving.
- [65] The Development Officer correctly determined that 13 pick-up/drop-off parking spaces were required. It is Council's intention that onsite pick-up/drop-off is required, but a portion can be put on the street. The Development Officer erred by granting a variance allowing all the pick-up/drop-off spaces to be on the street.
- [66] The Child Care Services does require a loading space but none is provided.
- [67] School buses will be an unavoidable reality.
- [68] The Plans submitted by the Respondent indicate there are 12 on-street spaces, which was accepted by the Development Officer. However, the wrong dimensions were used to determine the number of spaces. Using the correct required dimensions would reduce the number of spaces to eight. These spaces cannot be used for drop off and loading because street parking is regularly used by visitors to the neighbourhood.
- [69] There are two multi-residential developments being constructed on 111 Avenue and 126 Street. Thus these on-street parking spaces cannot be reliably used and should not be exclusively designated for commercial use.
- [70] Mr. Stephen provided Exhibit B, which shows the measured current traffic flows undertaken on multiple days.
- [71] The streets are under construction and he had believed the work would be finished by now.
- [72] He does not agree with Transportation that there will be no traffic concerns.
- [73] He provided a letter from a resident who lives adjacent to a small Child Care with 37 children. She indicated that parking, congestion and noise have a major impact on her life.



- [74] The Development Officer allowed two variances. Section 11.4 of the *Edmonton Zoning Bylaw* states variances may be allowed only if the proposed development would not, in the Development Officer's opinion, unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [75] The Respondent has stated that he requires 15 employees, which is less than Alberta Government requirements. This number does not include other staff, such as a director, cooking staff and cleaning staff. The total number of staff should be around 19 to 22. With miscalculated staff numbers, staff parking is under estimated.
- [76] Mr. Stephen believes that *Edmonton Zoning Bylaw* Section 54.2, Schedule 1(33)(b)(iii) should have been applied as opposed to Section 54.2, Schedule 1(33)(b)(ii), which calculates parking on the basis on the amount of children versus the amount of Floor Area. This is because it is a residential daycare and the building has been permitted as a Single Detached House.
- [77] It is clear Council wanted to increase the number of Child Care Services but not to this degree. If a small residential Child Care is allowed, street parking should only be allowed for a portion.
- [78] Mr. Stephen was concerned about the noise impacts. He referenced the *Community Standards Bylaw*. The Presiding Officer indicated the Board does not have the jurisdiction to deal with that Bylaw, but allowed the Appellant to address his concerns. Mr. Stephen provided information as to what is an acceptable noise level. He also provided a noise level reading from a nearby Child Care Services use showing a higher level of noise than deemed acceptable.
- [79] Mr. Stephen stated the Historical Officer had no concerns with the proposed development because there were only minor changes proposed. However, the play facility is not large enough and requires a fence to be located in the Front Yard. This is in direct contravention of Council's intention. A property owner can have a fence of up to 1.2 metres and in some instances up to 1.8 metres. He believes that a larger fence is required under Alberta Government requirements. Mr. Stephen reviewed the Plans, which shows a new six-foot fence. The DC1 provides that the appearance of the Dwelling should not be damaged or changed.

*ii) Position of Affected Property Owners in Support of the Appellants*

**Mr. K. Chipeniuk**

- [80] Mr. Chipeniuk lives on the corner of 108 Avenue and 126 Street and he submitted a letter.

- [81] He is trying to understand the directions of Council. The DC1 was meant to protect the character, location and proportion of structures from the 1900s. Council wanted to preserve the essence of the residential neighbourhood. It is difficult to see how commercial development is consistent with Council's directions. At one point the City was going to install a certain type of street lighting. The neighborhood objected because they wanted pedestrian-oriented street lighting and City Council agreed. There are only 10 blocks of all Westmount that are eligible for pedestrian lighting as opposed to street lighting.
- [82] Under the DC1, it states the guidelines of RF1 apply. One of the allowed uses is Child Care. The definition of Child Care states it must be within the care provider's residence. The Respondent must maintain an area in the building that is for a private residence with some provision of commercial, but not solely commercial.
- [83] The Board pointed out that the punctuation found in the Child Care definition would lend itself to the interpretation that "within care provider's residence" references to day homes or group family care.

**Ms. A. Coull**

- [84] Ms. Coull has been a resident in the neighbourhood for 42 years. The neighbourhood has changed significantly over the years. Previously it was half owned and half rented. Now it is a beautiful historical area that is being revitalized by the influx of new people. Allowing this Child Care facility would set a dangerous precedent. It would only be a matter of time before this area "goes the way of Old Strathcona and Oliver, where the only value is the dirt under the house."

*iii) Position of the Development Officer Ms. C. Yeung, accompanied by Mr. C. Fremmerlid, Transportation Services*

- [85] The property is within the DC1 Direct Development Control District for the Westmount Architectural Heritage Area. Child Care Services is an allowable use. Although the DC1 was passed when *Land Use Bylaw 5996* was in effect, the Development Officer determined that the *Edmonton Zoning Bylaw* applied, including the sections related to Child Care. This determination was made based on Sections 2.4 through 2.6 of the *Edmonton Zoning Bylaw* and the ruling by the Alberta Court of Appeal in the *Parkdale-Cromdale* case. This DC1 falls within the West Ingle Area Redevelopment Plan. This Area Redevelopment Plan was enacted to protect one of the oldest neighbourhoods in Edmonton and preserve its unique heritage and character homes.
- [86] On this Site, a Development Permit for a Religious Assembly was granted in 1964. It was a Child Care Use between 1964 and 2004. In 2004, the building was converted to a Single Detached House.

- [87] The proposed development did not provide the required pick-up/drop-off parking onsite. In the opinion of the Development Officer, and with the agreement of Transportation Services, there was sufficient on-street parking immediately adjacent to the site, as evidenced by the photographs provided by the Respondent.
- [88] In the opinion of the Development Officer, given the nature of the Use, a typical loading space is not required. The Respondent also provided supporting justification to this effect.
- [89] The Development Officer had three main reasons why the proposed development was approved. First of all, the Use is allowed. Secondly, the Respondent provided justification acceptable to the Development Officer and Transportation for parking on-street. Lastly, the proposed development does not negatively impact the West Ingle Area Redevelopment Plan.
- [90] The Board asked the Development Officer to comment on how many on-street parking spaces are actually available and if the 5.5-metre length that was used by the Respondent is appropriate. Mr. Fremmerlid stated the *Edmonton Zoning Bylaw* has a requirement of 13 spaces for pick-up/drop-off. He calculated 10 available spaces compared to 12 by the Respondent. He pointed out that the spaces at the ends only need to be 5.5 metres in length because you can drive directly into them rather than having to parallel park. Further, the Respondent provided justification for the reduced number of pick-up/drop-off spaces needed based on their observations at their existing daycare of 152 children showing that only five to seven pick-up/drop-off spaces are used at any one time. Based on the evidence presented today by the Appellants, he has not changed his view that the number of on-street parking spaces is sufficient. He did not perform a site visit. He used all available online resources, including a Google street view, which confirmed what the Respondent presented that the street parking adjacent to the Site is often empty. Regarding the photos of street parking in the neighbourhood submitted by one of the Appellants, he stated that 110 Avenue is under construction and this means that construction workers are using street parking. He expects there will be less demand for street parking when construction work is done.
- [91] The Development Officer submitted that the recent bylaw amendments regarding Child Care Services were introduced to reduce barriers in residential neighbourhoods. The largest barrier was the old requirement that pick-up/drop-off spaces had to be onsite. In this case, the Respondent provided acceptable justification to allow all the pick-up/drop-off spaces to be on the street.
- [92] The Development Officer confirmed the building is a legal non-conforming building. It met the regulations when it was built but no longer does. This application is only for a change in Use with only minor changes to the building.

- [93] The Board asked the Development Officer to comment on changing the garage to a classroom. She reviewed the previous Development Permits. In 2004, a Development Permit was issued to change the Religious Assembly to a Single Detached House. It is standard practice that, if the Development Permit allowed the attached garage, it would be mentioned in the Development Permit. That particular Development Permit does not mention a garage. There is no indication that it was used to park cars and she cannot assume that existing garage doors means the space will be used for parking. The attached garage was not allowed in the Development Permit from 2004. Even if it allowed a garage, there is nothing in the *Edmonton Zoning Bylaw* that prohibits it to be used for something else. The Development Permit Application does not indicate that a garage is being converted into classrooms, but the previous permit does not say it was a garage.
- [94] The Development Officer allowed the outdoor play area at the front because the Respondent is taking steps to attenuate the noise by limiting the number of children using it at any given time. The only regulation that applies is Section 80(3)(a) of the *Edmonton Zoning Bylaw*.
- [95] The Board asked the Development Officer to comment on whether the employee parking requirement is correct. She stated the *Edmonton Zoning Bylaw* was recently amended. Previously, they looked at the number of children and that determined the number of staff parking spaces. This is no longer the case. It is now based on Floor Area. Pursuant to Section 54.2, Schedule 1(33)(b)(ii), she is satisfied the number of spaces is correctly calculated.
- [96] The Board asked Transportation Services whether an independent parking study should be required. He indicated it is not usual with a development of this scale for the developer to do the parking study. Independent parking studies are typically only done for large commercial developments.
- [97] Transportation does not feel there are safety issues associated with the proposed development. If issues arise, there are other departments that can deal with them. It is his opinion that the pick-up/drop-off spaces variance is justified. Parents will use a space for only five to ten minutes within certain time frames so cars will not be parked throughout the day. From a land use perspective, this is an efficient use of space and land and is in line with City Council's direction about removing barriers to allow Child Care Services in residential areas.
- [98] The Board asked the Development Officer to comment about the argument regarding too many people coming and going in the neighbourhood. The Development Officer advised that, when the application was submitted, a package was attached showing how community consultation was conducted. The submission showed that most people consulted were in support of the application. Further, she stressed that community consultation is not a requirement. The Development Officer asked for additional consultation to ensure that people fully understood the project and the variances required. She expanded the notification radius to 120 metres. The documents distributed indicated the number of children that would be onsite and the variances that were required.

They waited two weeks for responses. The Respondent provided eight letters of support and one in opposition, which was concerned about the noise of children playing. In her opinion, the sound of children playing is part of what forms a community.

- [99] The Development Officer declined to comment on whether she would make a different decision now based on the concerns raised by the Appellants.
- [100] The Board asked the Development Officer to comment on the definition of Child Care Services, specifically at the end of the definition, where it states “within the care provider’s residence”. She stated that that clause at end of the definition does not apply to this type of Child Care. There is no residential component allowed in the building for the proposed development.
- [101] The Board asked the Development Officer to comment about the play area at the front of the property and specifically the concern regarding the Height of the fence. She stated that the regulations in the *Edmonton Zoning Bylaw* speak to fencing requirements for Child Care. The standard requirement is 1.2 metres where the play area is at grade. Only where the play area is above grade is a higher fence required. The intent of the DC1 and the general intent of West Ingle Area Redevelopment Plan is to maintain the historical character of the neighbourhood. A higher fence at the front of the building would be contrary to this.
- [102] In regards to questioning regarding waste collection, the Development Officer referred to the comments of Waste Management, who stated that residential waste collection could continue for the proposed development if they provided additional waste receptacles. After the proposed development starts operating, this will be re-assessed and the Respondents may be required to provide alternatives.
- [103] The Board asked the Development Officer to confirm the size of the building. She advised that the building area at grade is 7228 square feet, which includes the attached garage. The lower portion is 2113 square feet. This is a total of 9341 square feet or 867.81 square metres. Since it is located near 124 Street, Section 54.2, Schedule 1(33)(b)(ii) of the *Edmonton Zoning Bylaw* applies. Eight stalls are required for employee parking. No loading space is provided. Because employees will bring the necessary supplies, one employee parking spaces satisfies the need for a loading space.
- [104] The Development Officer stated the building is a legal non-conforming building. It has a 48 percent Site Coverage. This is a change of Use application which permits minor alterations to the building. The Respondent has the right to continue the use of the building pursuant to the provisions of section 643 of the *MGA*.
- [105] The Development Officer stated there is no size requirement regarding the size of the play area in the *Edmonton Zoning Bylaw*. This is regulated by the Province. Twenty-six kids can fit into the space. She can only ask for information required under the *Edmonton Zoning Bylaw*. The Respondent submitted there will be a maximum of 15 kids playing within that space at any one time.

- [106] When asked, Transportation Services stated that off street parking is probably a safer option for pick-up and drop-off but he does not think that on-street pick-up/drop-off is unsafe.
- [107] The Board asked the Development Officer to comment on the average size or capacity for Child Care Services in the city. She advised that when she did a search, it pulled up hundreds of permits but they did not indicate if they were in residential zones. Her geographical area is central Oliver. She has not approved this type of Use in a residential area previously.
- [108] The Development Officer confirmed the *Edmonton Zoning Bylaw* does not have a cap on the maximum allowable number of children for Child Care Services. The number of children is based on the Floor Area. She spoke to a senior planner who advised her that Child Care Services developments are governed by the regulations regarding things such as Setbacks and Site Coverage, as well as Section 80 requirements and parking regulations. Other aspects of Child Care Services are subject to Alberta government regulations.
- [109] The Development Officer stated that since this is an existing building, she cannot request the owner to make alterations.
- [110] It terms of the *Community Standards Bylaw* and potential noise, all the Development Officer can do is ask for information. The information she was provided is there are going to be a maximum of 15 children in the play area at one time, which should limit noise.
- [111] Under this DC1, Child Care Services is an allowed use and the Respondent justified the variances requested. She cannot control the number of children allowed.
- [112] With regards to 124 Street being a Transit Avenue, the Development Officer confirmed this in Appendix C of the *Edmonton Zoning Bylaw*. She properly applied Section 54.2, Schedule 1(33)(b)(ii) to calculate employee parking, because the proposed development is within 117 metres of 124 Street. She did not consult with Transit.
- [113] The Development Officer believed that the recent changes to the *Edmonton Zoning Bylaw* by Council were to reduce barriers to providing Child Care Services in residential neighbourhoods. The variances she allowed comply with the directions of Council.
- [114] Pursuant to Section 54.2, Schedule (1)(33)(a)(iii), she could approve a portion of pick-up/drop-off spaces on the street without a variance if Transportation is satisfied with the proposal. In this case, all of the pick-up/drop-off spaces are on the street, so a variance is required.
- iv) *Position of the Respondent, Mr. G. Ranu, accompanied by Legal Counsel, Mr. R. Colistro*
- [115] The Board's jurisdiction is limited under Section 641 of the *MGA*.

- [116] The DC1 sets out the list of Uses which are allowable.
- [117] The architecture of this development is preserved and the development remains consistent with the historical area.
- [118] The proposed application is for 120 children. There is no specific limit on the number of children. The size of the building itself regulates the number of children.
- [119] The building is located on two lots, not a single lot like most of the homes in the area.
- [120] Sections 11.3 and 11.4 of the *Edmonton Zoning Bylaw* give the Development Officer the discretion to grant a variance, which was done in this case for the passenger pick-up/drop-off and for a loading space.
- [121] The Development Officer has acted appropriately.
- [122] The employee parking requirements were changed since this application was submitted. It is now based on Floor Area. In the application, they gave an inexact Floor Area. They have now submitted more exact Floor Area calculations prepared by the designer. In terms of the required employee parking under the new regulations, because the development is located within 400 metres of a Transit Avenue, Section 54.2, Schedule 1(33)(b)(ii) says that one stall per 117 square meters of Floor Area is required. With a Floor Area of 816.8 square metres, seven stalls are required.
- [123] The approved Development Permit provides for eight employee parking spaces onsite.
- [124] Employee parking is more appropriate onsite because they will be parking for longer periods of time. This reduces the demand for on-street parking.
- [125] Pick-up and drop-off will happen in early morning or late afternoon. Drop off times are short and parents are not at the facility for a long time. This is a corner site. There is an alley in the back. If they put pick-up and drop-off spaces in that back location, it would probably create more problems with congestion in the lane.
- [126] They provided a site plan with the Development Permit. Employee parking is in the back. Pick-up and drop-off will be on the street.
- [127] Included with their application (Schedule J) are pictures of parking on the adjacent streets. Pictures were taken on February 16, February 19, March 4, and March 7, all time-stamped. March 7 is really the first time a vehicle is visible parked on the street.
- [128] The *Edmonton Zoning Bylaw* requires a Loading Space for many Uses even though they are not needed, such as this Child Care Use. They do not have commercial deliveries and only experience loading requirements that are typical of residential traffic. At their current Child Care center, groceries and cleaning supplies are delivered by an employee. There is no delivery vehicle.

- [129] The Respondent counted cars in front of their current center. During peak hours, the maximum number of cars picking up or dropping off at the same time ranged from five to seven. The neighbourhoods are different. In Hillview, where the existing facility is located, 62 percent of neighbourhood residents drive to work. In Westmount, only 52 percent drive to work. This indicates that there may be fewer people in Westmount who will use their vehicles to pick up their children.
- [130] The Respondent parked in front of Westglen YMCA and counted cars. On July 25, 2016, between 6:55 a.m. and 9:00 a.m., the peak number of vehicles parked was four. The licensed capacity for this facility is 124 children. The facility is located in two adjacent buildings. Although the Respondent does not know the actual enrollment, there is a wait list for various age groups. They have stopped taking names for the wait list for the youngest group. At one point in the afternoon, the Respondent counted nine cars. However, he observed some parents leaving their cars parked and taking their children to play in one of the two nearby parks.
- [131] The Development Officer followed the directions of Council by consulting with Transportation Services, who had no objection to on-street parking.
- [132] The Development Officer assessed the overall compatibility of the proposed development with the neighbourhood.
- [133] The building is a non-conforming building. The building had a Development Permit and then the regulations that applied changed. However, the building can continue being used. Using the building in its current form makes sense because it reflects the character of the neighbourhood.
- [134] Included with the information package is a history of the building. It was first developed in 1961 as a religious education building. In 1963, a building permit was issued for a nursery school. In 1997, a permit for an outdoor play area was issued.
- [135] The Heritage Planner did not have any concerns with the proposal because it retains the historical character of the area.
- [136] The building presents a practical hardship. Based on the Floor Area, regardless of what is proposed for the building, there will be a requirement of seven to eight stalls. It is practically impossible to accommodate all required parking onsite. The Development Officer relied upon the information provided plus Transportation's approval when granting the parking variance. The Development Officer followed the directions of Council and exercised her discretion appropriately.
- [137] The site is zoned DC1 so the Presiding Officer correctly pointed out that the Mature Neighbourhood Overlay does not apply. The Appellants referred to a rejected application to develop a commercial use. That was a rezoning application, which is not relevant because we are dealing with the zoning in effect now.



- [138] With respect to the Appellants' pictures at the YMCA Child care, it should be noted it is in close proximity to multi-residential units, which may have an impact on street parking.
- [139] In reference to the *Community Standards Bylaw*, there is no tangible evidence regarding noise. If the proposed development creates undue noise, neighbours can call Bylaw Enforcement. The Respondents have taken steps to mitigate noise. The level will not be so excessive that it would be unacceptable. The Respondent will schedule outdoor play time. They will rotate children so there will be a maximum of 15 children at one time in the outdoor play area. There will be children in the play area between 9:00 a.m. and 2:45 p.m. when the neighbourhood is at its quietest. The outdoor play area can accommodate up to 26 children. They can allow more children at lunch. The out of school care kids will also use the neighborhood parks. The on-site play area will be used by children six and under.
- [140] The pictures of street parking the Respondent submitted are closer to the proposed development. The ones the Appellant took are on 125 Street. This property is on 126 Street. There is a lot of construction in the area, which would have an impact on parking on 125 Street. Once the construction is completed, the on-street parking will be better.
- [141] There are provincial child care regulations that the operator is bound by and must comply with. This is beyond this Board's jurisdiction.
- [142] When examining the variance, it is important to note that noise from children is not a consideration with regards to parking. Nothing in the Bylaw provides a hard cap on the number of children. Putting a cap on the number of children would not be following the directions of Council.
- [143] The Board needs to look at the overall need for Child Care which supports local residents and is primarily residential.
- [144] Even though the development is not subject to the Mature Neighbourhood Overlay and thus there is no requirement to conduct community consultation, the Respondents did undertake consultation. They held two open houses. They met with the Community League. The Community League did not take a position, but acknowledged the effort made. Letters of support have been obtained as indicated on the map submitted. They believe the discrepancy of the one property that both supports and is opposed to the development is because there are two individuals living at property and one signed in support and one in opposition. The sample letters provided indicate there was full disclosure about the nature of the development.
- [145] There appeared to be some dispute as to whether this development needs to take place in a residence. The proposed development is not approved as Child Care with a resident in the home.

- [146] As stated earlier, if the Board finds that the Development Officer did not follow the directions of Council, the Respondents are presenting alternative arguments for the Board to consider.
- [147] If the Board is concerned about parking, they have some alternative proposals.
- [148] At the time they made the original application, the new Bylaw was not yet in force. With the new Bylaw, the amount of Floor Area now determines the required number of employee parking spaces. Floor area is defined term under Section 6.1(35) of the *Edmonton Zoning Bylaw*. Given the importance of Floor Area now, the Respondent got updated plans to ensure the Floor Area was calculated in accordance with the definition.
- [149] The Respondents submitted alternative site plans, stamped Exhibits E through G. Nothing about the building changes. They have reconfigured the on-site parking. They have reallocated one employee space as onsite passenger pick-up/drop-off. The first plan indicates no Loading space because the proposed development will not make use of it. This also means moving garbage receptacles. Plan number 2 provides a Loading Space which is allowed to project as depicted pursuant to Section 44 of the *Edmonton Zoning Bylaw*.
- [150] The original plans show 12 spaces on the street. According to Transportation, there may be only 10 parking spaces. The requirements were amended in June after the application was made.
- [151] The Appellants had an issue regarding the length of on-street parking spaces to allow for parallel parking. The Respondent has recalculated the availability as being 11 spaces. Also, the *Edmonton Zoning Bylaw* provides that on-street parking can be allowed if it is located within 100 metres of the entrance, so more on-street spaces are available further to the east.
- [152] The Respondents are willing to accept a variation to the plan but its original application is most preferable.
- [153] When the alternative plans were prepared they were circulated to Transportation, who also found the alternatives were acceptable.
- [154] The fence on the flanking Side Yard is an architectural feature. They may have put in a six-foot high fence. They can reduce a portion to four feet. They can also get a separate permit for a six-foot fence.
- [155] Section 54.2, Schedule 1(33)(a) provides that passenger pick-up/drop-off spaces cannot be located further than 100 metres from the main entrance. These spaces do not have to be adjacent to the property. This means there are many parking spaces that are considered acceptable. This coincides with Council's intention for removing barriers to Child Care in residential areas.

- [156] Currently there is one Child Care Services in the neighbourhood at the school with a significant waitlist. One Child Care facility recently shut down. There is a shortage of Child Care in the area if you look at the census data and the significant number of children in the area. The number of children in the proposed development is based on what the site could accommodate. The Respondent believes the need far exceeds the 120 children proposed. There are 60 spots for younger children as there is a greater need for younger age groups.
- [157] The Respondents tried to negotiate with the Appellants regarding the number of children. However, the Appellants' limit of 40 children is not economically feasible.
- [158] The proposed Child Care can accommodate 120 children without a variance.
- [159] The Child Care Use existed at the time the DC1 created. City Council intended to continue this Use. The Use historically allowed 70 children. The occupancy for the Religious Assembly was 150 people. The proposed development is not inconsistent with its historical use.
- [160] There are 14 employees proposed plus two staff for out of school children and a potential requirement for a director. This is a total of 16 to 17 people.
- [161] The employee parking lot is sufficient. At the Respondent's existing Child Care operation, many employees take transit and many staff are picked up by their husbands.
- [162] At their current facility, they counted about five to seven vehicles picking or dropping off at peak times. This location has designated onsite parking. The parking lot is underutilized because most parents park on the street. Those five to seven vehicles include those in the parking lot.
- [163] The Board asked the Respondent for clarification about the play area in the flanking Side Yard. He responded that the size was established with reference to provincial guidelines. The indoor court yard will house the infants. Only 50 percent of the total number of children will use the play space in the Side Yard.
- [164] The Board asked the Respondent to comment about the garage. He advised that this was previously a Religious Assembly with nine classrooms. When it was converted to a Single Detached House, the previous owner made no structural changes other than to put in three overhead doors in the wall. The garage was originally a classroom and they are turning it back into a classroom.
- [165] Upon questioning from the Board, the Respondent stated the existing fence is aesthetically pleasing and they plan to match the style of the fence.
- [166] Upon questioning from the Board, they advised the existing concrete driveway will be used for parking. The shaded part of the plans indicates where pavement will be placed for additional onsite parking stalls.

- [167] The Board asked the Respondent to clarify the difference in required employee parking spaces. He responded that originally the overhead footprint was used to calculate the Floor Area. That Floor Area was not a relevant factor because, at that time, employee parking spaces were based on the number of employees. Then the *Edmonton Zoning Bylaw* was amended to make parking spaces dependent on Floor Area, which is a defined term. So the Respondent used the definition to more precisely calculate Floor Area. The old Floor Area and the new one are very close and result in a difference in the number of employee spaces required that is a fraction of a space. The original calculation was just above seven, which meant it had to be rounded up to eight. The new calculation is just below seven, meaning it gets rounded up to seven.
- [168] At this point, the Development Officer indicated that she could not confirm the calculation because she did not have a chance to go through the revisions. Also, she would need to get Waste Management's comments about relocating the location for garbage pickup.
- [169] The Respondent provided Exhibit I which is an email that the plans were provided to the Development Officer on August 4.

v) *Position of Affected Property Owners in Support of the Respondent*

**Ms. H. Manweiller**

- [170] Ms. Manweiller lives on 125 Street and 110 Avenue. She is a single mother to a five year old and a two year old. The five year old has mild special needs. She constantly struggles to find Child Care. The YMCA daycare is waitlisted and the list is closed. There are no dates as to when spots will become available. Her children attended the Equinox Centre in the neighbourhood, which only took 13 children. It closed because the business housing it closed. Her children currently attend a daycare in Inglewood that only offers spots to children zero to five years old, meaning that soon she will be without Child Care for her oldest child.
- [171] The Inglewood Child Care has no onsite parking. It uses only street parking, which is designated loading for any purpose. Sixty children attend and the outdoor play space can hold 30 children.
- [172] The Equinox Child Care had no dedicated parent drop off. There was no street parking because was located at 107 Avenue and 124 Street. The entrance door opened onto the back alley, which was difficult during winter and you had to share the alley with other commercial businesses.
- [173] Westmount is a growing community and needs a reliable size daycare. She is concerned that the Board might reduce the number of children allowed as she wants to make sure the Child Care is permanent so her children do not have to be moved again. She fails to see the parking issues raised by her neighbours.

**Ms. M. Steenbergen**

[174] Ms. Steenbergen lives seven blocks from the site, on 122 Street and 108 Avenue. She is looking for a child care spot. The YMCA waitlist is two years. She has been advised the best chance is to commute to a different YMCA and then ask for a transfer. She knows other young families in the neighbourhood are struggling to find child care. She believes many people will bike and walk to the proposed Child Care.

*vi) Rebuttal of the Appellants*

[175] Mr. R. Rios resides at 11022-126 Street and he had a question regarding the proposed Setbacks. The Presiding Officer asked him to speak to one of the Appellants so they could address it during their rebuttals

**Mr. M. Stephen**

[176] Mr. Stephen submitted that the new plans should be subject to a new Development Permit application.

[177] The Respondent acknowledged there is a garage which will be converted back to living space. The Development Officer said she could not confirm or deny whether a garage was there. The conversion of the garage is structural. The Respondent is trying to slip in a major structural change to increase square footage.

[178] The proposed development exceeds the average size of a Child Care. There are only two large Child Care Services in the City, both in commercial zones and one is owned by the Respondent.

[179] Mr. Stephen estimates it will take two to three hours to drop off children at the proposed development and that will create continuous traffic in the neighborhood. This is akin to an elementary school.

[180] This is the Development Officer's first residential Child Care Services permit. The Transportation Engineer also has limited experience. He relied upon the Respondent's data and numbers with no evidence or efforts to confirm accuracy. He acknowledged that onsite parking is a safer option. There is no space for bus parking. He should have completed a more extensive study or checked the accuracy of numbers but solely relied upon Google maps. The only way to be sure is to actually visit the site. He stated that should any safety concerns be identified, they could be addressed after, but should they not be addressed before. This does not demonstrate the appropriate skill and his conclusion was the basis upon which Development Officer allowed the parking variance.

[181] The Development Officer should have identified the conclusions by Transportation as not accurate enough to be relied upon. She did not demonstrate the appropriate experience to justify these conclusions. Thus the directions of Council were not fulfilled.

- [182] If the Respondent is proposing to park on the side and pave the side yard, this would mean there is a zero lot line. That would require different variances and should necessitate a reapplication.
- [183] The Appellants are still unclear what the correct number of required employee parking spaces are.
- [184] If the Development Officer is using rough numbers to calculate the parking requirements and now has more accurate numbers, then how can anyone be sure of anything. The numbers should have been verified. If she is not verifying them, then she is not following the directions of Council.
- [185] If the Respondent presented the alternative plan to take advantage of the “portion” argument, then this is definitely not what Council intended.
- [186] This Development Permit is flawed and there are multiple reasons to reject it.
- [187] A Child Care Service of reasonable size is what the community would support.

**Ms. Kucher**

- [188] Ms. Kucher was provided the letter dated August 4, Exhibit I, through a FOIP request. This letter looked like the Respondent was trying to introduce new plans. When Ms. Kucher asked the Development Officer about this issue, she was assured she would not look at them, but request a new application.
- [189] The part of the Bylaw that changed the most is that the parking spaces are to be designated. Transportation Services did not comment on signage on the street. This would give the Respondent exclusive use of this street.
- [190] The Bylaw states that on-street parking is available if an applicant can satisfy a portion of the requirement onsite. The Development Officer indicated that she would not find one off street space satisfactory as a portion.
- [191] The Development Officer’s inexperience would come into play versus an experienced developer.

**Ms. A. Piccinin**

- [192] Transportation Services did not visit the site and the amount of available on-street parking is wrong. This is supported by an aerial view of the property, marked Exhibit K.

- [193] The Respondents stressed they gave the neighbourhood the opportunity for people to give their opinion about the proposed daycare. There was no community involvement to the degree that is being spoken about. Further, many people were unclear about the size being proposed.
- [194] She does not agree with the Respondent's interpretation of the YMCA pictures. The adjacent building is an Apartment with only 13 units and they have plenty of space to park in the rear.
- [195] She does not believe no commercial vehicles will be needed. Milk and groceries need to be delivered.
- [196] If parents are allowed to park across the street from the proposed development, that would cause even more safety issues.

### **Decision**

- [197] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority and subject to the CONDITIONS as stated in the Development Permit.

### **Reasons for Decision**

- [198] The subject Site is located within the DC1 Direct Development Control District for the Westmount Architectural Heritage Area pursuant to Bylaw 11421 passed February 10, 1997 (the "DC1").
- [199] Due to the DC1 designation, the appeal is governed by Section 641(4)(b) of the *MGA* which states in part, "if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, ...the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision."
- [200] Accordingly, the Board has to determine whether the Development Officer followed the directions of Council in this case.
- [201] Based on Section 2.7 of the *Edmonton Zoning Bylaw* and the Alberta Court of Appeal in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309, the Board finds that the provisions of the *Edmonton Zoning Bylaw* apply in this case as opposed to the *Land Use Bylaw* in effect when this DC1 was created.
- [202] Section 1 of the DC1 states the General Purpose of the DC1 is "to establish a Direct Control District for single detached residential development and associated uses, as found under the RF1 (Single Detached Residential) District, in the Westmount Architectural

Heritage Area so as to continue the tradition of heritage and community as originally conceived in the subdivision and architecture of the Area. The District is based on the RF1 Regulations but with additional Development Criteria and accompanying voluntary Architectural Guidelines, as written and developed by residents of the Area, that are intended to preserve the Area's unique historical streetscape and architectural features, reflecting the character, location and proportions of existing structures from the early 1900s in the Area, including: Boulevards with mature trees; continuous sidewalks; rear lane access to on-site parking; verandahs; and other features as originally conceived in subdivision plans and architectural designs of the early 1900s."

- [203] The Appellants argued that the proposed development is not in keeping with Council's directions because it does not preserve the area's unique historical streetscape and architectural features, reflecting the character, location and proportions of existing structures from the early 1900s in the area. The Board rejects this argument. The building has been in existence for decades. The proposed development is a change in Use and will not result in any significant change in the appearance of the outside of the building.
- [204] The Appellants argued that the proposed development is a commercial use that had no place in a residential neighbourhood. Section 3(g) of the DC1 indicates that Child Care Services is a listed use in the DC1. The Board concludes that Council intended that Child Care Services should be allowed in the DC1.
- [205] The Appellants argued that the number of children that would be allowed at the proposed development was too large and this was not what Council intended. Section 4(a) of the DC1 states that the regulations of the RF1 District shall apply, except where superseded by the development criteria contained in the DC1. Section 80 of the *Edmonton Zoning Bylaw* contains the regulations governing Child Care Services. There is nothing in that section limiting the number of children in a Child Care Service.
- [206] The Board heard evidence that the regulations regarding Child Care Services were recently changed to remove barriers to having Child Care Services within residential neighbourhoods. Although Council had the opportunity to set limits on the number of children, Council chose not to do so. There is no basis for this Board to interfere with the Development Officer's decision simply because of the number of children.
- [207] The Development Officer allowed a variance so that the required 13 onsite pick-up/drop-off spaces could be satisfied by on-street parking. The Appellants were of the view that the Development Officer erred by doing this. Section 54.2 Schedule 1(33)(a) of the *Edmonton Zoning Bylaw* states that Child Care Services requires the following minimum number of Parking Spaces:
- a) Passenger pick-up/drop-off spaces shall be provided at the rate of 2 pick-up/drop-off spaces for the first 10 children, plus 1 additional pick-up/drop-off space for every 10 additional children.



- i) Passenger pick-up/drop-off spaces shall be designated with signs to reserve the parking spaces for Child Care Service pick-up/drop-off, to the satisfaction of the Development Officer.
- ii) Passenger pick-up/drop-off spaces shall be located as close as possible to the main entrance used by the Child Care Service, and shall not be located further than 100 metres from the main entrance used by the Child Care Service. The distance between the farthest parking space in the pickup/drop-off area and the main entrance of the Child Care Service shall be measured along the shortest publically accessible pedestrian route.
- iii) An on-street loading zone shall satisfy a portion of the passenger pick-up/drop-off parking space requirement without a variance if the Development Officer, after consultation with Transportation Operations, is satisfied with the proposal.

[208] Council specified in Section 54.2, Schedule 1(33)(a)(iii), that a portion of these spaces could be satisfied with on-street parking without a variance if the Development Officer, after consultation with Transportation Operations, is satisfied with the proposal. In this case, the proposal was to have no onsite pick-up/drop-off spaces and to use parking spaces on the adjacent streets of this corner Site. Although there was considerable discussion in the course of the hearing as to how many spaces there are on the immediately adjacent streets, the Board is satisfied that there are at least 10 spaces. The representative from Transportation Operations stated that he was satisfied that this number of spaces would be adequate for the proposed Child Care based on information provided by the Respondent about their experience with their Child Care at another location. That information was that only five to seven spaces would be used at any one time during peak hours. Transportation Services also accepted the Respondent's information as to the availability of street parking during the relevant times of the day. The Development Officer accepted Transportation's opinion with respect to proposal to provide all spaces on the street and granted a variance for this.

[209] The Appellants presented evidence about street parking in the area intended to show that it is less available than the Respondent contends. The Board finds that the Appellants' evidence was not as relevant or as extensive as the Respondent's evidence on this point. Also, many of the photos presented by the Appellants showed conditions that were affected by construction activities. These conditions are likely to improve when construction is completed.

[210] The Board is satisfied that Transportation Services did not make an error in accepting the Respondent's evidence. The Board is also satisfied that the Development Officer followed the directions of Council and exercised the discretion given by Council in Section 54.2, Schedule 1(33)(a)(iii) in a reasonable way. Accordingly this Board does not have the jurisdiction to interfere with her decision to allow pick-up/drop-off parking requirement to be satisfied by on-street parking.

- [211] The Appellants also took issue with the Development Officer's decision to grant a variance with respect to the required loading space. Section 54.4, Schedule 3(2) requires a development of this size to have minimum of one Loading Space on site. The Development Officer granted a variance so that no Loading Space is required on site. In doing so, the Development Officer accepted the evidence of the Respondent that all necessary supplies for this Child Care would be delivered by an employee who would use an employee parking space when dropping off supplies. The Board is satisfied that the Development Officer used her discretion appropriately when assessing whether a Loading Space was required. Therefore, she followed directions of Council and the Board does not have the jurisdiction to interfere with that decision.
- [212] The Appellants pointed out that the building is a non-conforming use. They felt that the alterations proposed, specifically converting the portion concurrently configured as a garage back into a classroom, would be extensive enough to cause the building to lose its legal non-conforming status.
- [213] Section 11.3(3) of the *Edmonton Zoning Bylaw* states:
- The Development Officer may approve, with or without conditions as a Class B Development, an enlargement, alteration or addition to a legal non-conforming building if the non-conforming building complies with the uses prescribed for that land in this Bylaw and the proposed development would not, in his opinion:
- a. unduly interfere with the amenities of the neighbourhood; or
  - b. materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- [214] It is the view of the Board that Council intended that the Development Officer's general variance power contained in section 11 of the *Edmonton Zoning Bylaw* should also apply in the DC1. It is unreasonable to interpret the DC1 as intending that the regulations of the RF1 District should have to be complied with strictly without any variance power whatsoever. Council's intent was not to enforce strict compliance with the regulations but, rather, that in the DC1 additional requirements would be mandated to protect the historical character of the neighbourhood.
- [215] The Board is satisfied that the Development Officer correctly and reasonably exercised the variance power in this section when she concluded that the alterations proposed to the interior and exterior of the building would not unduly or materially affect the neighbourhood or neighbouring parcels of land.
- [216] The Appellants argued that the proposed number of employee parking spaces onsite was insufficient. Although there was some uncertainty about the Floor Area of the building, which determines the number of employee parking spaces needed onsite, the most conservative calculation shows that eight spaces are required and are being provided.

[217] It was the position of the Appellants that the definition of Child Care Services requires that someone had to reside on the premises. The definition of Child Care Services in the *Edmonton Zoning Bylaw* is:

7.8(2) Child Care Services means a development intended to provide care, educational activities and supervision for groups of seven or more children under 13 years of age during the day or evening, but does not generally include overnight accommodation. This Use Class typically includes daycare centres; out-of-school care centres; preschools; and dayhomes/group family care providing child care to seven or more children within the care provider's residence.

[218] The Board concludes that only dayhomes/group family care facilities are intended to be in the care provider's residence.

[219] Based on the evidence provided and for the reasons above, the Board finds that the Development Officer did follow the directions of City Council in approving the proposed development. Therefore, in accordance with Section 641(4)(b) of the *Municipal Government Act*, the Board has no jurisdiction to substitute its decision for the Development Authority decision and the appeal must be denied.

Mr. M. Young, Presiding Officer  
Subdivision and Development Appeal Board

**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 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*, 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 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.*