

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: G. Young v Development Authority of the City of Edmonton, 2020 ABESDAB 10049

Date: May 14, 2020
Project Number: 343046208-002
File Number: SDAB-D-20-049

Between:

G. Young

and

The City of Edmonton, Development Authority

Board Members

Kathy Cherniawsky, Presiding Officer
Jack Jones
Art Peterson

DECISION

[1] The Subdivision and Development Appeal Board (“SDAB”) made and passed the following motion on March 25, 2020:

“That the appeal hearing be rescheduled to a date to be determined.”

[2] The Board made and passed the following motion on April 29, 2020:

“That the appeal hearing be raised from the table.”

[3] On April 29, 2020, the Board held an appeal hearing regarding an appeal that was filed on March 11, 2020 for an application by Span Architecture Inc. The appeal concerned the decision of the Development Authority, issued on February 14, 2020, to approve the following development:

To construct a 2 Storey commercial building with General Retail Stores on the main floor and Professional, Financial and Office Support on the second floor.

- [4] The subject property is on Plan 9423352 Blk 18A Lot A, located at 11803 – 114 Avenue NW, within the (CB1) Low Intensity Business Zone.
- [5] In accordance with the SDAB Emergency Procedures, the appeal hearing on April 29, 2020 was held on a written submission only basis. In considering this appeal, the Board reviewed the following submitted material, which forms part of the record:
- SDAB Agenda and Notification Map;
 - Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions and photograph attachments;
 - The Respondent’s written submissions; and
 - Online and email responses from adjacent property owners.
- [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*”).

Decision

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

Reasons for Decision

- [8] This is an appeal of the approval of an application to construct a two Storey commercial building with General Retail Stores on the main floor and Professional, Financial and Office Support on the second floor. Per Section 330.2(7) and Section 330.2(13) of the *Edmonton Zoning Bylaw* (the *Bylaw*), both proposed Uses are Permitted Uses within the (CB1) Low Intensity Business zone.
- [9] The proposed development complies with all applicable development regulations except the parking and loading space regulations. Per Section 54, Schedule 1(A) the development requires 38 parking spaces, but only 23 are proposed. Per Section 54.4(3)(a) and Section 54.4, Schedule 3, the development also requires two loading spaces at 3.0 metres by 9.0 metres each. However, only one loading space at 3.0 metres by 7.0 metres is proposed.
- [10] The Development Officer issued the permit with variances to allow 23 on-site parking spaces and a single loading space at 3.0 metres by 7.0 metres.
- [11] A neighbouring property owner appealed the approval in order to maintain a pleasant and desirable residential community without the negative influences of a commercial development. The Appellant cited general concerns about the adverse impacts of commercial developments including: decreased property values, decreased privacy,

added noise and the loss of a park and green space views for the neighbouring residences; and, reduced access to and safety of the abutting off-leash dog park to the south.

[12] The Appellant raised four additional issues:

- i)* Problems with the process followed by City administration revealed during the zoning hearings in 2019 before Council which ultimately resulted in the loss of a green space buffer from 119 Street;
- ii)* Confusing procedures followed with the development permit notices;
- iii)* Deficiencies in the site plan for landscaping, building height and lack of a shadow study; and,
- iv)* Uncertainty about whether the property had been properly remediated by the developer.

[13] The Appellant argued that the parking and loading variances should not be allowed as:

- i)* On-street parking is limited and used by existing residents;
- ii)* Residences to the north are zoned RSL Residential Small Lots so nearby residents use 114 Avenue for parking and the residents facing 114 Avenue park on the front street due to vandalism in the lane;
- iii)* With no marked cross walkway or traffic device at the intersection of 119 Street and 114 Avenue and given the distance to the subject Site, clients will be unlikely to park on 120 Street;
- iv)* Transit is not a viable option because there is no transit along 119 Street, the nearest transit is located on Kingsway Avenue to the north and 111 Avenue to the south;
- v)* The developer requested a Development Permit based on basic retail Uses; however, they really want other discretionary business Uses with increased parking requirements; and,
- vi)* The loading space variance should not be allowed as it was based on the two Uses that were applied for and future Uses such as cafés would require more loading space. If the loading space is minimal, then deliveries would add to the parking variance as parking spaces could be used for loading.

[14] Several additional submissions were sent by neighbours opposed to the development. They echoed the Appellant's objections. The Board considered their submissions as they all indicated they were directly affected because they must pass the development to leave the neighbourhood and that increased pressure on parking would impact them.

[15] A petition was submitted by the Appellant and signed by several neighbours from just over 50 addresses (many within the notification area, others outside of it, including some

located several blocks from the Site). The Board reviewed the petition carefully and notes that it mentions the parking and loading space variances, but also lists the many other objections which the Board finds for the reasons below are unrelated to the variances at issue in this appeal.

[16] The Board received one written submission supporting the development from the owner of a property located 5 to 10 metres outside the notification area. The Board considered the author to be an affected party because he shares the rear lane with the subject Site and is located in very close proximity, his lot abuts two other lots within the 60-metre notification area. He is in overwhelming favour of the development and cited it as one of the main driving forces for him to engage in nearby infill. He suggested improvements to pedestrian engagement which were unrelated to the required variances.

[17] The Respondent argued that the variances should be allowed for the following reasons:

- i) The proposed development will add amenities to the area by enhancing the streetscape, improving traffic safety and providing services within walkable distance of the neighbouring residences.
- ii) Due to an excess of parking for commercial developments across the City, Council is moving forward in June 2020 with changes to the *Bylaw* that will remove the mandatory minimum parking requirements in Schedule 1(A) of Section 54 entirely. The proposed development has suitable parking based on the new criteria in the draft plan which allows parking to be optimised based on site size and use, rather than the current arbitrary minimums. The proposed 23 parking spaces and one loading space addresses these criteria. Adding more parking spaces would reduce the green space along 119 Street, the enhanced landscaping and the size of the building (endangering the feasibility of the project and reducing services available to the community).
- iii) The mix of retail, professional and office businesses will ensure traffic to the building is dispersed throughout the day and evening on weekdays and weekends. Clients will not be concentrated at any one time.
- iv) The Site is accessible on foot for both the residents to the north and east and for the people associated with businesses to the west which reduces the need for vehicular parking stalls.
- v) The Site is located close to transit and also 1.5 blocks east of a bike lane and on-site bicycle parking is provided.
- vi) The development may hasten the addition of a marked crosswalk or a traffic control device.

[18] The Board first considered the issues cited with respect to the notices and the 60-metre notification radius. This radius is set in the *Bylaw* which also requires publication in a newspaper. The Development Officer explained that the initial notice was not published in the newspaper so he notified neighbours a second time to rectify the error and meet all

the *Bylaw* notification requirements. The Board also notes that notices of this appeal were sent out by the SDAB administration in accordance with the *Bylaw* and the *Municipal Government Act* and many submissions were received. The Board finds that the substantive requirements for notice in accordance with the *Municipal Government Act*, the *Bylaw* and the principles of fairness were met.

[19] As noted above, the proposed development is to construct a building for two Permitted Uses which requires parking space and loading space variances. The Board's jurisdiction in this appeal comes from Section 687 of the *Municipal Government Act*. The authority to grant the parking and loading variances is found in Section 687(3)(d) which states:

In determining an appeal, the subdivision and development appeal board

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[20] The possibility other Uses may be sought at some future time is speculative and is not a reason to deny the parking and loading variances associated with the current application for the specified Uses. In all cases, the Board's appellate authority is limited to the scope of application requested in the Development Permit – in this case, to construct a Building for two stated Uses. Any approved Development Permit must be limited to General Retail Stores on the main floor and Professional, Financial and Office Support on the second floor.

[21] Future changes of Use, if and when they may materialize, will require new permits which will be reviewed by the Development Authority for compliance with development regulations (including parking and loading requirements) and subsequently also subject to appeal in the normal course.

[22] The neighbours objected to the commercial nature of project and argued that the Site should be rezoned back to a park or green space. Council rezoned the Site of the former EPCOR substation from a (PU) Public Utility Zone to a commercial CB1 Zone. The

Board has no authority to revisit Council's decision, to rezone the Site or to change the list of allowable Uses.

- [23] The requirement for an environmental review is part of the rezoning process. It is not relevant to the parking and loading variances.
- [24] Impacts on neighbouring views and sun shadowing are not related to the variances. In any event, the proposed building meets all Setback and Height regulations.
- [25] The sufficiency of the proposed landscaping is unrelated to the variances. The landscaping plan was reviewed and found to be compliant with the development regulations in Section 55 of the *Bylaw*.
- [26] The Board considered the Respondent's argument that Council is coming to view parking requirements such as those applicable in this case as arbitrary minimums and is moving to remove them from the *Bylaw* next month. That may be, however, the Board applies the provisions in force at the time of the hearing and at this time the minimum standards remain in effect.
- [27] The Board allows the related parking and loading variances for the following reasons:
- i) The variances specific to this development are unlikely to have a material impact upon current traffic congestion given the existing patterns or future congestion with the significant increases in traffic expected with the future development of Blatchford.
 - ii) As vehicles cannot park on the north side of 114 Avenue to the immediate east of 119 Street, they will not impact movement at the intersection of 119 Street and 114 Avenue.
 - iii) The Board recognizes the limits on parking in the adjacent residential zones including the RSL Zone to the north and the prohibition on parking on the north side of 114 Avenue. However, the photos provided by the Appellant also show several nearby vacant spots where on-street parking is allowed, notably spaces on the south side of 114 Avenue adjacent to the proposed development are completely unoccupied.
 - iv) The development will increase available neighbourhood amenities and the Site is within walking distance for persons associated with the businesses to the west and for residents to the north and east which will reduce the need for on-site parking spaces.
 - v) The proximity of bike lanes and availability of bicycle parking facilities will also reduce the need for vehicular parking spaces.

- vi)* Parking Services, the City department which deals directly with on-street parking issues, reviewed the parking variance with the Development Officer and indicated that they had no concerns.
 - vii)* The Board accepts the Development Officer's reasoning that the Uses will be complementary so the minimum parking requirement may not be needed for this development.
 - viii)* Given the small scale of the proposed Uses, vans or small trucks are likely to suffice for deliveries.
 - ix)* The landowner will be able to schedule complementary staggered loading times and the second loading space will be better used as a parking space.
- [28] Overall, the Board was not persuaded that the parking and loading space variances will contribute materially to traffic current congestion or materially adversely affect nearby property owners.
- [29] For the above reasons, the Board finds that the proposed parking and loading spaces will likely meet the need of the businesses and the parking and loading variances will not materially adversely impact the use value or enjoyment of neighbouring properties.
- [30] The Appeal is dismissed.



Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

c.c. City of Edmonton, Development & Zoning Services, Attn: P. Adams / H. Luke

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.