



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 22, 2018
Project Number: 266153417-001
File Number: SDAB-D-18-019

Notice of Decision

- [1] On February 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 12, 2018**. The appeal concerned the decision of the Development Authority, issued on January 8, 2018, to refuse the following development:

**Develop 3 additional Dwelling units in an existing Apartment House
(18 Dwelling units in total).**

- [2] The subject property is on Plan RN4 Blk 132 Lots 19-20, located at 10757 - 83 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:
- A copy of SDAB-D-12-003;
 - A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - A Transportation Services memorandum; and
 - The Appellant’s written submission.

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.

Summary of Hearing

i) Position of the Appellant, Mr. R. Dhawan, who was accompanied by Ms. C. Savoy

Mr. Dhawan

- [7] Mr. Dhawan referred to his PowerPoint Presentation and stated that he is the owner of the Douglas Manor Heritage Building.
- [8] There will be no alterations to the exterior of the building, which will preserve the heritage façade.
- [9] The building has existed for several years with 15 dwelling units.
- [10] The subject site is in walking distance to the University of Alberta and one block from Whyte Avenue.
- [11] He wants to convert a large three-bedroom unit into four bachelor suites on the basement floor, which will not add to the square footage of the building.
- [12] With regard to increasing the density, there is a large demand in this area for affordable housing.
- [13] The City is promoting an increase in density as Edmonton is evolving.
- [14] He referred to other residential apartments to show how infill can modernize and preserve historic buildings.
- [15] The proposed Centre LRT Line will benefit the subject site.
- [16] He referred to the photographs showing large developments such as The Raymond Block and The Trax.
- [17] He received letters in support from neighbouring property owners, the Old Strathcona Business Association, and the Strathcona Community League.
- [18] He referred to photographs showing there is sufficient amenity space on the west side of the building that has picnic tables, chairs, and a barbeque for the residents. The amenity space is accessed from the front or back doors.
- [19] Transportation Services does not have an objection to the deficiency in the number of required parking spaces.

[20] This is a walkable neighbourhood. Several residents in this neighbourhood do not have a vehicle. There are several bus stops within 2 to 3 blocks of the subject site with the LRT in close proximity. On-street parking is available in the front and the side of the building.

[21] Waste Management and Drainage Services do not have an objection with the proposed development.

Ms. Savoy

[22] Ms. C. Savoy is the property manager of the subject site.

[23] The majority of the people that rent their units are students attending the University of Alberta and tenants who enjoy the Heritage area.

ii) Position of Mr. L. Hauer, an Affected Property Owner in Support of the Appellant

[24] Mr. Hauer stated that he is in support of the proposed development.

iii) Position of the Development Authority, Mr. J. Angeles

[25] The Development Authority provided a written submission and did not attend the hearing.

Decision

[26] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The Site shall be developed in accordance with the stamped, signed, and conditionally approved drawings.
2. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference section 51).
3. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$3,354.00. The SSTC charge is quoted at year 2017 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.

ADVISEMENTS:

1. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw* 12800.

TRANSPORTATION CONDITIONS:

1. A barrier such as curb stops or delineation with landscaping must be placed between the parking stalls and the City sidewalk on private property, as shown on Enclosure I.
2. 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://vvvvvv.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx
3. 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. The alley, sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

TRANSPORTATION ADVISEMENTS:

1. Access from the site to the adjacent east-west alley is acceptable.
2. The garbage pickup is shared with the adjacent property to the east that has a larger site for the garbage bin and has continued since 2003. This has been discussed and approved by Waste Management.
3. According to Section 54.2, Schedule 1, Vehicular Parking of Edmonton Zoning Bylaw 12800, the site has an existing on-site parking deficiency of 15 parking stalls (existing 6 stalls; required 21 stalls).

The attached parking justification letter (see Enclosure II) indicates that 2 of the 6 parking stalls are currently being rented for use by tenants. In the evening there are only 2 or 3 cars parked in the rear.

Many of the tenants are students or work in the area and do not own a car. Three of the suites are dedicated to the Homeward Trust program that provides affordable housing. The proposal also has written support from the Old Strathcona Business Association (see Enclosure III) as well as neighbours and neighbouring businesses. We recognize that this is a historical building built in 1914 with limited parking and that parking requirements have changed over the years. The owner is dedicated to preserving the building that is characteristic of the Garneau neighbourhood. This location is well served by transit and there is also some on street parking available. Parking restrictions are in place with limited 2 hour parking between 8 a.m. to 6 p.m. along 108 Street. There are 5 public parking lots in the area. Given this, Subdivision Planning has no objection to the parking deficiency.

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

1. The maximum Density is 10.15 Dwelling units per hectare per section 210.4(2) is varied to permit an excess of 7.85 Dwelling units, thereby increasing the maximum Density to 18 Dwelling units.
2. The minimum required total of 12 on-site parking spaces per section 54.2, schedule 1(C)(1) is varied to permit a deficiency of 6 parking spaces, thereby decreasing the minimum required on-site parking spaces to 6.
3. The minimum requirement for Private Outdoor Amenity Area per section 823.4(3)(a) is waived.

Advisement:

The Board notes that the previous Board decision (SDAB-D-12-003) granted variances to the minimum required Rear Setback and Side Setback.

Reasons for Decision

[28] The proposed development, interior alterations to an Apartment House is a Permitted Use in the (RA7) Low Rise Apartment Zone.

[29] With respect to varying Density, the existing building consists of 15 Dwelling units. The proposed development will convert one three-bedroom Dwelling unit into four bachelor suites. The Proposed Density meets many requirements of the Garneau Area Redevelopment Plan and the Municipal Development Plan ("*The Way We Grow*") by providing affordable housing and housing choices.

- [30] The Board finds, given the Site location, that there were no planning reasons provided that would indicate that an increase in Density would have a material impact or adverse effect on the neighbourhood.
- [31] The Board notes that there were no letters of objection received and no one appeared in opposition at the hearing.
- [32] The Board received letters of support for the proposed development that specifically dealt with the increase in Density and the proposed variances. The Board notes the letters of support from the Old Strathcona Business Association and the Strathcona Community League.
- [33] With respect to parking, the Board used the current *Edmonton Zoning Bylaw* regulations to calculate the minimum required number of parking spaces. Based on section 54.2, schedule 1(C)(1), 9 residential parking spaces plus 3 visitor parking spaces for a total of 12 parking spaces are required. There are 6 existing on-site parking spaces and the Board granted a deficiency of 6 parking spaces for the following reasons:
- a. The Board was presented with evidence from the Appellant that 6 existing parking spaces are not fully utilized by the current tenants.
 - b. Pursuant to section 54.2, schedule 1(C), under *Transit Oriented Development*, the subject Site is within 150 metres of a Transit Avenue (82 Avenue NW).
 - c. The Board notes that contained within one of the advisements outlined above by Transportation Services, it indicates they have no objections with an even larger variance than the variance calculated by the Board with this proposed development. Therefore, given the decrease in the size of the variance the Board believes that Transportation Services would have no issues with this lower variance.
- [34] With respect to the variance in the minimum required Private Outdoor Amenity Area, the Board notes that the existing Building is non-conforming and does not have any Private Outdoor Amenity spaces. However, based on the common Amenity Area requirement of the (RA7) Low Rise Apartment Zone per section 210.4(10), the Board through its calculations determined that the proposed development with the existing development complies with the required Amenity Area. The Board determined 135 square metres of Amenity space is required and 163 square metres is provided. The Board is satisfied that this excess in the common Amenity Area and the subject Site's close vicinity to large public amenity spaces is sufficient.

[35] For all of the above reasons, the Board is of the opinion that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members in Attendance

Mr. N. Somerville; Ms. L. Gibson; Mr. R. Handa; Ms. Kronewitt Martin

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Development & Zoning Services, Urban Form and Corporate Strategic Development, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Development & Zoning Services, Urban Form and Corporate Strategic Development, 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: February 22, 2018
Project Number: 239164375-003
File Number: SDAB-D-18-020

Notice of Decision

- [1] On February 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 12, 2018**. The appeal concerned the decision of the Development Authority, issued on January 12, 2018, to refuse the following development:

Change the Use from General Retail Stores to Child Care Services and to construct interior and exterior alterations (construct outdoor playspace, amend Landscaping) (maximum 62 children).

- [2] The subject property is on Plan 1523990 Unit 2, located at 5010 - 162 Avenue NW and Condo Common Area (Plan 1523990), located at 5004C - 162 Avenue NW, within the (CNC) Neighbourhood Convenience Commercial Zone. The Hollick Kenyon Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan apply to the subject property.

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

- A copy of SDAB-D-17-044;
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions;
- One e-mail in opposition to the proposed development; and
- Two e-mails in support of the proposed development.

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.

Summary of Hearing

i) Position of the Appellant, Mr. M. Umarji, who was accompanied by Ms. N. Umarji, representing ZONA Developments

[7] Ms. Umarji referenced their written submission and referred to each reason for refusal on the development permit application.

[8] She stated that the Child Care Service (Daycare) will not directly abut the Rapid Drive-Through Vehicle Service (Car Wash) as the propose Daycare will be on the second floor.

[9] The Car Wash will not share the same horizontal plane, entranceway, or heating and ventilation with the Daycare.

[10] The outdoor playspace will be at the rear of the building along 51 Street and will be separated from the Car Wash by a 10 inch precast concrete panel.

[11] The noise generated from the wand style Car Wash will be contained in the mechanical room and not in the actual Car Wash stalls. The mechanical room is on the east side of the property adjacent to the 7/11 convenience store and not the Daycare.

[12] Ms. Umarji referred to a noise study to indicate that the noise level will be approximately 55 to 60 decibels, which is equivalent to a normal conversation at one metre.

[13] They have isolated all of the HVAC requirements from one use to another with separate ventilation and heating units for both the Daycare and the Car Wash.

[14] The Daycare will be on the north portion of the subject site away from traffic for the 7/11 and Gas Bar. The main entrance of the Daycare is approximately 123 feet away from the Car Wash on the north side of the property. The entrance to the Car Wash is located at a controlled traffic light meaning vehicles will be moving slow when entering the Car Wash.

[15] There will be steel columns with concrete filled bollards to prevent traffic impacts along the sidewalk area.

[16] There will be designated parking spaces for the Daycare.

[17] The drop-off area will be at the rear of the building connecting to a sidewalk to the main entrance. The drop off area was approved by Transportation Services.

[18] The Daycare's staff kitchen, janitorial room, laundry room, and staff washroom will be situated closest to the Car Wash.

- [19] TAB 7 of the submission is a decision for a Daycare that was approved by the Board. That Daycare has a common wall between the entrance of the Daycare which abuts the exit of a Car Wash.
- [20] TAB7 shows pictures of the Smartchoice Daycare and Bright Path Daycare that were approved in 2016. The Daycare playspaces are adjacent to a Car Wash queuing area with no barricades to separate them other than a landscaped yard. Those Daycares share a site with a Gas Bar.
- [21] With regard to the separation distance, the calculation does not consider the measures they are undertaking to limit the impact of the neighbouring Gas Bar. The nearest gas pump is approximately 47.2 metres, which is under the 50-metre requirement.
- [22] TAB 8 of the submission shows the location of the 7/11, the Gas Bar, and the Car Wash. The 7/11 is between the Daycare and the Gas Bar which will minimize any safety concerns from the Gas Bar.
- [23] Traffic using the Gas Bar will not have access to the area of the Daycare. Traffic for the gas pumps and the 7/11 is south of the 7/11. Traffic will not be driving through the parking lot.
- [24] There is approximately a 72-metre distance from the gas tanks to the Daycare. The Gas Bar is on the southeast corner of the site and the Daycare is on the northwest corner of the site.
- [25] The underground tanks at the Gas Bar are located 61 metres away from the Daycare. The tanks have a bladder system that is tested on an annual basis. The nearest gas pump has an auto shut off feature for any leaks, or fires to prevent an explosion.
- [26] In the original development permit application, the Development Officer calculated the distance to the nearest gas pump to be 43.11 metres. It is now being calculated at 38.9 metres even though the Daycare is farther away and located on the second floor.
- [27] The Board has approved Daycares that are less than 50 metres from a Gas Bar. One of the approved Daycares is 38.5 metres away from a Gas Bar with the playspace located at the rear of the building, which is similar to the proposed development (TAB 9).
- [28] The original application was for 110 children which required 57 parking spaces for a deficiency of 25 parking spaces. They are providing 32 parking spaces with 3 on-street pick-up and drop-off spaces. The proposed development permit will be for 62 children which will create a deficiency of 23 parking spaces. However, the deficiency is now for 22 parking spaces due to an error in the Development Officer's calculation (TAB 11).

- [29] The Development Officer is calculating one parking space per 40.0 square metres, which is 21 parking spaces for the Car Wash. In their opinion, cars will either be inside the Car Wash or in the queuing lane and will not be otherwise parking on site. In their opinion, if the parking requirements for the Car Wash are removed from the calculation, the proposed development would only be deficient by one parking space.
- [30] She referred to an aerial photograph showing several apartments within three blocks of the subject site which are connected with a public sidewalk. In their opinion, residents will not need to cross the street to access the site.
- [31] There is an elementary / junior high school four blocks away from the subject site, which will allow students to walk to the Daycare.
- [32] The proposed playspace is within the setback of an area that abuts a neighbourhood road and parking lot to the north. The playspace will be enclosed on all sides. The playspace will have equipment that will not be permanent fixtures. The subject site is surrounded by a public road way and a parking lot to the north. Fencing the property will ensure the children's safety.
- [33] The playspace is 50 feet away from the nearest front yard of a residence and approximately 106 feet away from the nearest condominium balcony which will minimize sound traveling to neighbouring properties. There will be 10 feet of green space between the Daycare and the road.
- [34] The proposed Daycare will be an asset to the community as there is no Daycare in the neighbourhood. This is a growing community with young families and a new school. Families will be able to walk their children to the Daycare.
- [35] They received neighbourhood support for the proposed Daycare. In their opinion, the need for parking will not be an issue as there is public transportation in the area.
- [36] In response to questions from the Board, they stated that the dimensions of the playspace are approximately 14 feet, 8 ½ inches wide by 79 feet long, with a total of 123 square metres.
- [37] The playspace will be surfaced with astro turf and will consist of sand, play houses, and moveable equipment. The equipment will meet the safety standards. They referred to a photograph showing what the playspace of the Daycare will look like.
- [38] The playspace will be abutting the property line. However, they could eliminate 3.0 metres on the north as shown in TAB 4.
- [39] The Brightpath Daycare is zoned DC2 Site Specific Development Control Provision and the Smartchoice Daycare is zoned CNC Neighbourhood Convenience Commercial Zone.

- [40] They confirmed that both of the approved Daycares in their submission have a Car Wash and convenience store on the subject Site. They referred to another Daycare that has a Gas Bar, Car Wash, and convenience store on the same site (TAB 10).
- [41] There is no entrance from the playspace to the commercial area except for an emergency exit if needed.
- [42] They do not believe that the one property owner opposed to the proposed development is within the 60-metre notification radius. However, they spoke to that property owner when they did community consultation. They did not receive any opposition when they conducted their community consultation. They provided information to property owners with any questions they had.
- [43] They will inform parents to park in the designated parking spaces and the location of the main entrance.
- [44] They could not confirm what will be located on the main floor of the retail area which is currently vacant.
- [45] With regard to the emergency exit in the playspace. They stated that only adults can access the playspace and the emergency exit could be alarmed if needed.
- [46] When children are dropped off they will walk in the opposite direction of the Car Wash.
- [47] Fire Services reviewed the overall site plan but they were not certain if Fire Services review change of use applications.
- [48] They confirmed that they do not need all the parking that is required for the proposed development.

ii) Position of the Development Officer, Mr. P. Adams

- [49] Mr. Adams interprets the term “adjacent” to mean “next to” or “connected to”.
- [50] The examples used by the Appellants to show other Daycares close to Car Washes predates the 2016 *Edmonton Zoning Bylaw* amendments to the Child Care Service regulations under section 80. There were no specific regulations from previous decisions on Rapid Drive-through Vehicle Services but there was for Gas Bars. Without specific job information related to previous decisions he does not know the variance or the justification as to why a Child Care Service was approved in close proximity to a Gas Bar.
- [51] With respect to the 2012 Smartchoice Daycare decision, a variance was issued for the 50-metre separation distance regulation.

[52] The exiting issues for emergencies and ventilation regulations are under Building Codes.

[53] Mr. Adams provided the following information in response to questions from the Board:

- a. The 50-metre separation distance regulation was implemented for safety concerns. The 38.9-metre separation was based on a measurement from the vestibule of the southeast corner of the building and a distance to the southeast corner of the building to the gas pump per section 80 of the *Edmonton Zoning Bylaw*.
- b. He still has the same concerns as the original application with the entrance to the second floor vestibule next to the car wash door. He has not seen any large changes to the location criteria from the original application.
- c. The proposed fence is along the property line but there is still a sidewalk and grass area between the playspace and 51 Street.
- d. Outdoor service space is not defined in the *Edmonton Zoning Bylaw*. However, the outdoor playspace is integrated into the Child Care Service; therefore it should not be in the required setback. The playspace can be in any yard, but under the definition of yard, a yard is not a setback. Therefore, the playspace cannot be within a setback. A yard can be within a setback but it is not a setback.
- e. He is concerned that if the playspace is approved to be in the setback, the noise from children may negatively affect the nearby residents.
- f. The loading zone is in front of the garbage pick-up area between the 7/11 store and the Car Wash.
- g. With regard for the need for 21 parking spaces for a 9 stall car wash, he indicated that it is associated with the general waiting of cars and it is still the parking regulation for that use even if it seems excessive. If the total parking deficiency was the only variance, maybe he would have made a different decision.
- h. With regard to concerns about the sidewalk and landscaping, he discussed the proposed development with landscaping technicians that said the proposed sidewalk along the north side of the lot could damage roots and the plants. The plants would have to be pruned which could affect the privacy screening.
- i. He was not aware of the noise study provided by the Appellants. Despite the 10 inch concrete wall and the Daycare placed on the second floor, based on the location criteria there is still a possibility of fumes and ground contamination. Gas Bars might have better technology today but there could still be an explosion and he still has to consider safety.

- j. With regard to the parking calculation, Transportation Services in their review did not want to consider the parking allocated for the 7/11. However, as a Development Officer following the *Edmonton Zoning Bylaw* he has to consider all lots that make up a site. Based on the parking deficiency for the entire site he felt it was inappropriate to support Transportation Services determination of the parking deficiency.
- k. He agrees with the Appellants that the proposed development will only increase the parking deficiency by one space if you exclude additional on-site parking required for the Car Wash.

iii) Rebuttal of the Appellant, Mr. M. Umarji and Ms. N. Umarji

- [54] With regard to congestion of the site. They stated that there is sufficient space for queuing of the Car Wash aside from the parking area on the site.
- [55] The site plan shows that the Car Wash is one storey and the subject building is two storeys.
- [56] In response to a question by the Board they stated that a variance was previously granted for the subject site.
- [57] They do not believe the previous parking variance should be considered for the proposed development. In their opinion, the proposed development only has one parking variance.

Decision

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

Reasons for Decision

- [59] The proposed development, a Child Care Service, is a Discretionary Use in the (CNC) Neighbourhood Convenience Commercial Zone.
- [60] The Board must determine when considering a Discretionary Use if it can be reasonably compatible with the Site and the neighbourhood. The Board has reached a conclusion that it does not meet this test of compatibility given the number of variances being sought, the location of the playspace in the required Setback, its proximity to a Gas Bar, and finally being connected to a Rapid Drive-through Vehicle Service (Car Wash)
- [61] The Board considered the difference between this application for 62 children to the previous application for 110 children that was denied by a previous Subdivision and Development Appeal Board (the "Board") panel.

- [62] While this number seems significant it did not have a material effect on the application overall as it is still a Child Care Service with a variance for separation distances between two Uses. The previous Board decision (SDAB-D-17-044) was considered by this panel and the Board supports much of the reasons for its refusal from the previous appeal. The Board shares the same justification with respect to the separation space of the Gas Bar and the proximity to the Car Wash.

Section 80(2)(a)(v) of the *Edmonton Zoning Bylaw* (the *Bylaw*) is a locational development regulation unique to Child Care Services that provides in part:

No portion of a Child Care Services Use, including the building bay and on-Site outdoor playspace, where provided, shall be located adjacent to a building bay with an approved development permit for the following Uses: v. Rapid Drive-through Vehicle Services.

These requirements are set out to ensure wherever possible the safety of users on a site. The Board was not convinced that this new application was materially different in that regard.

- [63] The Board had concerns with the dedicated area required for the children's playspace. The playspace's proximity to 51 Street and the rear concrete wall of both the main floor retail space and the Car Wash bay provides for a sliver of space which the Board has deemed to be confining.
- [64] The Board heard that there are direct accesses from the main floor retail space and Car Wash bays that may or may not be emergency exits that lead into the playspace. From the Board's perspective, direct access from other Uses into what ought to be a private and secure playspace contravenes the intent of the Child Care Service regulation.
- [65] The Board considered the Car Wash directly adjacent to the Child Care Service play space located on the second floor and still had some safety concerns with respect to the queuing line identified on the plans for the Car Wash. The Board has concluded that the vestibule is an entrance that will be used as much or more than what the Appellants have provided as a main entrance on the north. The Board makes its conclusion due to the elevator access and close proximity to parking, and the double doors. The Board finds that toddlers and strollers would most likely use the elevator and not the stairs.
- [66] The Board was presented with a noise study and accepts that evidence. However, it did not address the Board's concerns about possible noxious fumes from a Car Wash and the Gas Bar.
- [67] With respect to parking, the Board heard evidence regarding a different calculation indicating the previous variances provided for this Site and that there is a need for an additional one parking space variance associated with this proposed development and subject Site. The Board would have considered granting this variance had it reached the same conclusion to grant the other variances required for this proposed development.

- [68] The Board notes that adding a Child Care Service with a combination of existing General Retail, a Car Wash, and a Gas Bar will increase the intensity of the Use beyond the expectations of a Site this size and with the Discretionary Uses associated within the (CNC) Neighbourhood Convenience Commercial Zoning.
- [69] For all of the above reasons, should the required variances be granted the Board is of the opinion that the proposed development will materially interfere with the amenities of the neighbourhood and affect the use and enjoyment of neighbouring parcels of land.

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

Board Members in Attendance

Mr. N. Somerville; Ms. L. Gibson; Mr. R. Handa; Ms. Kronewitt Martin

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.
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 the City of Edmonton, Development & Zoning Services, Urban Form and Corporate Strategic Development, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.