



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 15, 2017
Project Number: 242635653-001
File Number: SDAB-D-17-163

Notice of Decision

- [1] On September 6, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 10, 2017**. The appeal concerned the decision of the Development Authority, issued on July 20, 2017, to approve the following development:

Construct a Recycling Depot

- [2] The subject property is on Plan 1122045 Blk 22 Lot B, located at 5240 - Ellerslie Road SW, within the DC1 Direct Development Control Provision. The Charlesworth Neighbourhood Structure Plan and Southeast Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions;
 - The Respondent’s written submissions;
 - Written submission from Legal Counsel for the Respondent;
 - Online responses; and
 - An email from an affected property owner in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Diagram of the site referenced by the Respondent

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).
- [8] The Presiding Officer explained to the parties that this site is zoned DC1 Direct Development Control District. City Council has taken special control of the site. The Board’s authority is limited under Section 641(4)(b) of the *Municipal Government Act*, 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.

The Presiding Officer asked all of the Parties to make submissions to the Board to explain how the Development Officer did or did not follow the directions of Council.

Summary of Hearing

i) Position of the Appellant, Ms. Mottershead, speaking on behalf of the Ellerslie Community League:

- [9] The Community League spoke with many residents in the Ellerslie Community (Charlesworth and Ellerslie), many of whom were appalled at the idea of the proposed Recycling Depot.
- [10] A petition containing the signatures of 156 Charlesworth residents in support of the appeal was submitted with the initial appeal. Since the appeal was filed on August 10, 2017, 74 additional signatures were obtained and provided to the Board.
- [11] The submitted petitions contain 230 signatures of residents of Charlesworth/Ellerslie and members of the Church located on the same parcel of land.
- [12] Residents who were contacted expressed concerns that the Recycling Depot was in fact a bottle depot. They questioned the necessity because there are four existing bottle depots located within close proximity to the subject site. Residents expressed concern that the

proposed development is not compatible with the neighbouring residential uses; will increase traffic in the neighbourhood; and result in an industrial looking streetscape.

- [13] The loading doors will be visible to residents who live across the street from the subject site.
- [14] Two Google aerial maps were referenced to illustrate ambiguity between addresses used for the proposed development. The address of 5240 Ellerslie Road SW was used on all of the notices sent by the City of Edmonton. However, this is a large site and the specific address for the proposed development is an 11 minute walk away from the address used by the City.
- [15] The Development Officer did not comply with the direction of Council for the following three reasons:
- a) Section 5.1(b) of Bylaw 17537 states that a generalized, non-binding, concept plan shall be submitted for all new building development or substantial redevelopment at the Development Permit stage to illustrate how the proposed development will integrate with existing and future surrounding and on-site development. The concept plans shall show the location of existing and future buildings, parking areas, vehicular and pedestrian routes and Amenity Areas. Ms. Mottershead referenced the Concept Plan provided by the Development Officer to support her opinion that the existing and future residential developments were not included and therefore not considered by the Development Officer.
 - b) Section 5.2(h) of Bylaw 17537 states that service lanes and/or loading areas shall not be permitted to abut the south side of the adjacent multi-family residential site. A rendering of the proposed development was referenced to illustrate that the overhead doors of the proposed Recycling Depot abut the south side of the adjacent multi-family residential site.
 - c) A rendering provided by the Respondent was referenced. Ms. Mottershead explained that the median included on the rendering does not exist and therefore the Development Officer has not complied with the landscaping requirements of Section 5.6 of Bylaw 17537.
- [16] The proposed development contravenes Section 687(c) of the *Municipal Government Act* because the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.
- [17] Large trucks will be accessing the facility on a daily basis and will increase traffic in this residential neighbourhood, especially along 4 Avenue SW, located immediately in front of existing residential properties. The commercial nature and massing of this development will negatively impact the amenities of the area and change the residential character of the neighbourhood.

[18] Ms. Mottershead provided the following information in response to questions from the Board:

- a) It was her opinion that the Development Officer did not properly consider how the proposed development will integrate with existing and future surrounding residential properties.
- b) The proposed overhead loading doors are located across the street from residential and directly facing properties.
- c) Even if the City is responsible for landscaping the meridian, the Respondent misrepresented this situation in the submitted renderings.
- d) The Development Officer did not comply with Section 5.1(b) and Section 5.2(h) of Bylaw 17537 even if this development permit is for the relocation of the previously approved Recycling Depot.

ii) *Position of Affected Property Owners in Support of the Appellant:*

Mr. J. Pasternak:

[19] Even if the Recycling Depot was located in the middle of the site, access would still occur from the south side which is still too close to the residential properties which will result in traffic and safety concerns.

iii) *Position of the Development Officer, Mr. Welch*

[20] The original Concept Plan was amended based on the relocation of the development. Generally, a Concept Plan for a bare land site is confined to the subject site to consider the location of the first building and the development of the remainder of the site.

[21] Section 6.1(1) of the *Edmonton Zoning Bylaw* defines abut or abutting as meaning immediately contiguous to or physically touching, and when used with respect to a lot or Site, means that the lot or Site physically touches upon another lot, Site or piece of land, and shares a property line or boundary line with it. Based on that definition, the proposed loading area does not abut the south side of the adjacent multi-family residential site because of an existing roadway between those properties and the subject site.

[22] Based on his experience, the discrepancy in addressing most likely occurred because addresses are still being assigned and the default is to the address of the entire site.

[23] Mr. Welch provided the following information in response to questions from the Board:

- a) It was his opinion that Section 5.1(b) of Bylaw 17537 can be interpreted differently. Although the Concept Plan does not reference or include the surrounding residential properties in relation to the subject site, the location of these residential parcels was considered during the development permit review.
- b) Some buildings have been developed on the west side of the subject site.

- c) Aerial photographs illustrate that many of the lots surrounding the subject site are still being developed.
- d) Required changes to the amenity space and landscaping were considered due to the location of the neighbouring residential properties.
- e) He questioned how a Concept Plan could be drafted to illustrate how the proposed development will integrate with existing and future surrounding development given that the area around the subject site is still being developed.
- f) The Concept Plan included the location of existing and future building, parking areas, vehicular and pedestrian routes and Amenity Areas on the subject site.
- g) The location of neighbouring residential properties was considered during his development permit review and resulted in the provision of some additional landscaping.
- h) There is a fairly major roadway separating the subject site from the residential properties on 4th Avenue SW. Section 6.1(1) of the Edmonton Zoning Bylaw defines “abut”.
- i) The landscaping included on the rendering referenced by the Appellant is fairly accurate.
- j) Bylaw 17537 does not specifically provide variance powers to the Development Authority.
- k) The proposed development complies with all of the development requirements and does not require any variances.

iv) *Position of the Respondent, Mr. S. Mather, representing the Green Bottle Depot Harvest Hills Ltd. and Mr. M. Kirk, Legal Counsel, Witten LLP:*

- [24] It was his opinion that the Development Officer followed the direction of Council in approving this development permit application.
- [25] The Appellant attended and made presentations at the Public Hearing with respect to amending Bylaw 17537 to include “Recycling Depots, only within an enclosed building”, as a Listed Use.
- [26] The General Purpose of the DC1 Direct Development Control Provision acknowledges that the subject site is bounded by two arterial roadways, a collector roadway and a future Transit Priority Corridor and abutting a natural area, a medium density residential site and an existing historic religious assembly.
- [27] Mr. Kirk agreed with the Development Officer that “abutting” is defined in the *Edmonton Zoning Bylaw* and means touching.
- [28] Drawings of the proposed Recycling Depot were referenced to illustrate that all of the recycling activities will occur inside the proposed building to comply with Section 4.1(dd) of Bylaw 17537.
- [29] An existing roadway creates a buffer between the subject site and the neighbouring residential sites.

- [30] All of the landscaping requirements will be met including the required number of trees and shrubs in the buffer area.
- [31] Mr. Mather referenced a diagram, marked Exhibit A, to illustrate that the 4th Avenue median identified on the renderings is part of the future Transportation Plan and is the responsibility of the City of Edmonton.
- [32] A non-binding Concept Plan, including the location of existing and future buildings, parking areas, vehicular and pedestrian routes and Amenity Areas was submitted to the Development Officer. The Development Officer indicated that he considered the location of neighbouring residential properties during the development permit review.
- [33] Schedule A of the DC1 Bylaw identifies the subject site, the natural area and all of the surrounding single family and multi-family zones as well as the existing Church. It was his opinion that the Development Officer followed the directions of Council who included a Recycling Depot, only within an enclosed building, as a Listed Use when this Bylaw was approved.
- [34] The proposed development complies with all of the development regulations contained in Bylaw 17537.

v) *Rebuttal of the Appellant, Ms. A. Mottershead:*

- [35] The roadway separating the subject site from the residential properties is only a two lane roadway and the majority of the houses along that roadway do not have front attached garages.
- [36] Even though recycling can only occur within the enclosed building, vehicles still have to enter the building through the overhead doors.
- [37] While the Development Officer may have considered the integration of the proposed development with existing and future surrounding developments, it was not referenced on the Concept Plan or in the written documentation provided.

Decision

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

Reasons for Decision

- [39] Section 641(4)(b) of the *Municipal Government Act* states that 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.

- [40] Accordingly, the Board cannot vary the decision of the Development Officer unless it concludes that the Development Officer failed to follow the directions of City Council.
- [41] Based on the submissions provided, the Development Officer followed the directions of City Council for the following reasons.
- [42] Pursuant to Section 4.1(dd) of Bylaw 17537, a Recycling Depot, only within an enclosed building, is a Listed Use.
- [43] The Development Officer provided evidence that all of the surrounding uses were considered during the development permit application review in accordance with Section 5.1(b) of Bylaw 17537 which states that:
- a generalized, non-binding, concept plan shall be submitted for all new building development or substantial redevelopment at the Development Permit stage to illustrate how the proposed development will integrate with existing and future surrounding and on-site development. The concept plans shall show the location of existing and future buildings, parking areas, vehicular and pedestrian routes and Amenity Areas.
- [44] The Board also notes that Bylaw 17537 which was approved by City Council in February 2016, includes Schedule "A", a map of the subject parcel of land that was rezoned and all of the surrounding land uses.
- [45] Further, the Board accepts that the concept plan provided fully meets the requirements of Section 5.1(b) of Bylaw 17537, because it fully covers the entire DC1 site and all abutting properties.
- [46] Section 5.2(h) of Bylaw 17537 states that:
- Service lanes and/or loading areas shall not be permitted to abut the south side of the adjacent multi-family residential site
- [47] Section 6.1(1) of the *Edmonton Zoning Bylaw* defines abut or abutting as meaning immediately contiguous to or physically touching, and when used with respect to a lot or Site, means that the lot or Site physically touches upon another lot, Site or piece of land, and shares a property line or boundary line with it. Based on this definition, the Board is satisfied that the proposed development does not abut the multi-family residential site to the north because a four lane collector/arterial roadway separates the subject site from the multi-family residential site.

- [48] Based on a review of the approved Landscaping Plan, the Board is satisfied that all of the landscaping requirements have been met. The proposed landscaping will act as a buffer between the subject site and the neighbouring residential sites as well as enhance the streetscape and encourage pedestrian traffic abutting the subject site.
- [49] Therefore, pursuant to Section 641 of the *Municipal Government Act*, this appeal is denied.

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

Board Members in Attendance: Mr. N. Somerville; Ms. D. Kronewitt Martin; Ms. N. Hack; Ms. G. Harris

Important Information for the Applicant/Appellant

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

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



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SDAB-D-17-164

Project No. 252680475-001

An appeal to change a portion of a Restaurant Use to a Bar and Neighbourhood Pub Use (128 square metres of Public Space, maximum 60 seats) and a Major Amusement Establishment Use (14 square metres of Floor Area). The Development Permit was **CANCELLED**.