



**Subdivision and
Development Appeal Board**

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DATE: July 26, 2013
APPLICATION NO: 114928133-004
FILE NO.: SDAB-D-13-156

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated June 13, 2013, from the decision of the Development Authority for permission to:

Amend an existing permit from Temporary Storage for RV trailers to Temporary Storage for gravel trucks

on Lot 4, Block 138KS, located at 505 – 65 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 11, 2013. The decision of the Board was as follows:

SUMMARY OF HEARING:

“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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to amend an existing permit from Temporary Storage for RV trailers to Temporary Storage for gravel trucks, subject to conditions. The site is located at 505 – 65 Avenue NW. The subject site is zoned DC1 Direct Development Control Provision. The approved development permit application was appealed by the Appellant/Applicant regarding the conditions imposed on the decision of approval.

The Board notes that there were no letters of either support or objection on file.

SUMMARY OF HEARING (CONTINUED):

The Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, Chapter M-26, which 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 council, there is no appeal to the subdivision and development appeal board, or is made by a development authority, the appeal is limited to whether the development authority following 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 Board first heard from Mr. Muhammad Saeed, RCD Consulting, representing the property owner, Mr. Kanwal Preet Ghuman, who was also in attendance. Mr. Saeed provided a detailed written submission, marked Exhibit "A", excerpts from the Edmonton Zoning Bylaw regarding landscaping, marked Exhibit "B" and photographs of adjacent properties, marked Exhibit "C", copies of which are on file.. Mr. Saeed made the following points in support of the appeal:

1. It was his opinion that the request of the Sustainable Development Department to have his client apply for a new development permit was not required because the proposed development is simply an amendment to a previously approved development permit to allow the Temporary Storage of RV trailers to Temporary Storage for gravel trucks.
2. The definition of Temporary Storage allows for the storage of gravel trucks on this site.
3. It was his opinion that several of the conditions imposed by the Development Authority are not required and that the Development Officer erred by imposing a landscaping condition pursuant to Section 55 of the Edmonton Zoning Bylaw.
4. It was his opinion that the condition imposed by Transportation Services to provide paved access from 65 Avenue is excessive because the existing access adequately provides access to store trucks and trailers in a gravelled area on the subject site.

Mr. Saeed provided the following responses to questions:

1. Mr. Ghuman purchased this property in September 2012.
2. It was his opinion that the Temporary Storage of RV trailers and the proposed amendment to allow the Temporary Storage of gravel trucks are both allowed uses and therefore a development permit is not required.

SUMMARY OF HEARING (CONTINUED):

3. It was his opinion that the proposed storage of gravel trucks on this site is not an intensification of use.
4. The photographs submitted in Exhibit "C" were referenced to illustrate existing accesses on adjacent properties.
5. It was his opinion that the storage of tractors and trailers as illustrated in the photograph marked SDAB-D-13-156f is in compliance with the permit granted for the subject site.
6. There are no limits on the number of vehicles that can be stored on the site, and their use of the site for parking fits within the legal definition of temporary storage.
7. Mr. Saeed could not comment on the conditions that were imposed on the previously approved permit for the storage of RV trailers on the subject site.
8. The new gravel laid down on the access to the site illustrated in SDAB-D-13-156a was added because of the recent rainfall and to improve access to the site.
9. They are opposed specifically to Conditions 1, 2 and 3 of the decision of approval by the Development Officer.
10. The property owner owns some of the trucks parked on the site. He has 6 or 7 employees who come to the site on a daily basis and use the trucks.
11. The property owner administers the site and lives and works on the site.
12. The landscaping security had to be paid prior to the application for a development permit. A landscaping plan was prepared and subsequently refused by the Sustainable Development Department.

The Board then heard from Mr. Faisal Saeed, representing Transportation Services who provided the following information:

1. He reviewed a series of emails that were sent to Precision Design and the ramifications of the proposed development.
2. He estimated that it would cost the property owner approximately \$60,000 to upgrade the site as a Temporary Storage facility.
3. The application for a development permit was submitted in April 2013 and the necessary responses were provided to the Application by May 9, 2013.
4. These discussions were related to usage and the type of vehicles that would be stored on the site.

SUMMARY OF HEARING (CONTINUED):

5. Mr. Saeed reviewed the design and the access guidelines using a computer generated model to illustrate that between 11.5 and 13.5 metres would be required to provide adequate two way access for tandem gravel trucks coming and going from the site. He explained the manoeuvre diagram in their letter to the Board dated July 5, 2013 that demonstrates the width of access needed for a safe manoeuvre involving trucks and trailers.
6. Access from the City roadway to the site must be paved in accordance with a City of Edmonton requirement.
7. He referred to a Google street map to illustrate that the previous owner did provide a paved access from 65 Avenue to the subject site.
8. Two way access must be provided because there is only one access point to the subject site.

The Board then heard from Mr. Nazrul Islam, representing the Sustainable Development Department, who provided the following information and responses to questions:

1. He reviewed the development regulations for Temporary Storage and determined that the proposed development does fit the definition pursuant to Section 7.5(5) of the Edmonton Zoning Bylaw.
2. A landscaping security was required prior to a decision being made because a 7.5 metres landscaped setback is required where any lot line abuts the property line of any residential development, pursuant to Section 4(d)(ii) of the DC1 Development Regulations. He felt that landscaping would minimize any impact on neighbours.
3. It was his opinion that the nature of the proposed development fits the definition of Temporary Storage in the Edmonton Zoning Bylaw because there is no permanent structure on the site. If the nature of the development is not permanent, then it does not fit the definition of General Industrial Use.
4. He had advised the Applicant of the deficiencies in the landscaping plan and the requirements of the Edmonton Zoning Bylaw. The Appellant was told to re-apply for a permit because of the intensification of use.
5. A Letter of Credit or cash is required as Landscaping Security and the landscaping must be completed within two years. Without a deposit, the landscaping may not be completed, as there is no building to be erected on the subject site.

SUMMARY OF HEARING (CONTINUED):

6. The previous owner had stored 15 recreational vehicles, belonging to friends and family, on the subject during the winter. There was no commercial business being conducted on the subject site.
7. He agreed that the Board photograph SDAB-D-13-156f appears to illustrate the parking of trailers within the 7.5 metre setback abutting the neighbour's property.

Mr. Faisal Saeed from Transportation Services provided the following responses to questions:

1. Section 650 of the *Municipal Government Act* provides authority to impose a condition requiring the Applicant to construct or pay for the construction of a road required to give access to the development.
2. Two-way access is required because there is only one entry way to the subject site.

The Board then heard from Ms. Michelle Bohn, representing the City of Edmonton Law Branch who advised that the Applicant has submitted a signed Municipal Improvement Agreement but not a Letter of Credit. Further, it was her opinion that the proposed development does fit the definition of Temporary Storage in this DC1 Zone although she acknowledged that there is some confusion or overlap between Temporary Storage and a General Industrial Use.

Mr. Muhammad Saeed made the following points in rebuttal:

1. He reiterated his opinion that landscaping is not required pursuant to Section 55.2(2) of the Edmonton Zoning Bylaw because there have not been any alterations or improvements or change of use to the building.
2. It was his opinion that the condition requiring paved access from a gravel entrance way to a gravel parking area on the subject site is excessive. Paving should be done in the future when the subject site is rezoned.
3. He stated that the maximum length of vehicles accessing the subject site is 45 feet, not 65 feet as stated by Transportation Services and used in their access model.
4. The property owner has signed the Municipal Improvement Agreement with the City in good faith but has not yet filed the Letter of Credit.
5. He reiterated that there are 160 mature trees on the subject site which in his opinion meets the landscaping requirements.

DECISION:

that the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED

The decision of approval by the Development Authority contains the following conditions:

1. The City accepted \$ 20,328.00 as Landscaping Security for the approved landscaping plan. Any letter of credit shall allow for partial draws. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms: If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. (Reference Section 55.6.)
2. The existing culvert crossing access from the site to 65 Avenue, located approximately 50 metres from the east property line, must be reconstructed and widened to 11.5 metres to meet current City of Edmonton standards for a large semi-trailer truck.
3. The owner must enter into a Municipal Improvement Agreement with the City for the following improvements:
 - (a) reconstruct and widen the existing culvert crossing access to 11.5 metres, located approximately 50 metres from the east property line.

The Municipal Improvement Agreement must be signed PRIOR to the release of the drawings for Building Permit review. The Agreement must be signed by the property owner and returned to Transportation Services to the attention of Mohammed Bashar (780-496-1799) including an irrevocable Letter of Credit in the amount of \$30,000.00 to cover 100 percent of construction costs. The Agreement will be forwarded directly to the owner for his signature. Once signed, the owner is required to have a Civil Engineer submit stamped engineering drawings for approval by the Transportation Services.

DECISION (CONTINUED):

4. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
5. There are existing trees and shrubs adjacent to the site that must be protected during construction. Should removal of the trees and shrubs be required, the owner/applicant must contact Marshall Mithrush of Community Services (780-496-4953). Any removal costs shall be borne by the owner/applicant.
6. Any hoarding or construction taking place on road right-of-way requires an OSCAM permit. The owner must call Transportation Operations at 780-442-6458 to arrange for the permit.
7. Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
8. 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 of the Edmonton Zoning Bylaw 12800.)

NOTES:

This site falls within the Maple Ridge and South East Industrial Arterial Roadway Assessment (ARA) catchment area. Arterial Roadway Assessments are to be deferred to future subdivision or development application, whichever occurs first. For further information regarding ARAs, please contact Raghda Abdelmonem (780-442-7042) of the Transportation Planning Branch.

DECISION (CONTINUED):

With the improvements associated with Anthony Henday Drive, the Province is removing direct access from 76 Avenue to Sherwood Park Freeway and access to Meridian Street from Highway 216 Street. Improvements to the interchange at Sherwood Park Freeway and 17 Street will provide all turning movements at Sherwood Park Freeway and 17 Street. The Province anticipates that construction will be completed by 2016.

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).

Signs require separate Development Applications.

The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.”

REASONS FOR DECISION:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states, “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.”
2. Based on the evidence provided, the Board finds that the Use of the property is Temporary Storage in accordance with the decision of the Development Authority. Section 7.5(5) of the Edmonton Zoning Bylaw defines Temporary Storage as development used exclusively for temporary outdoor storage of goods and materials where such storage of goods and materials does not involve the erection of permanent structures or the material alteration of the existing state of the land. Typical Uses include pipe yards, or vehicle or heavy equipment storage compounds.
3. While the Temporary Storage Use has not changed from the previous permit issued, there has been a significant intensification of Use from the relatively passive temporary long-term storage of recreational vehicles to the overnight storage of trucks used on a daily basis. The requirement for a new development permit was therefore warranted.
4. Temporary Storage is a listed use in this DC1 Zone, pursuant to Section 3(g) of the Maple Ridge Industrial DC1. Therefore, the Development Authority’s decision complies with the direction of City Council.
5. Based on the evidence provided, gravel trucks and trailers are being stored on the subject site without the protection of a permanent structure.
6. Section 4(d)(ii) of the DC1 Development Regulations states that a minimum Yard of 7.5 metres shall be required where any lot line abuts the property line of any residential development and the Development Authority has followed the direction of Council by imposing a landscaped setback.

REASONS FOR DECISION: (CONTINUED)

6. Section 55.2(2) of the Edmonton Zoning states that the provision of Landscaping, in accordance with this Bylaw, shall also be a condition of the issuance of a Development Permit related to an existing development if the existing development shall be, as a consequence of the work that is the subject of the Development Permit, substantially enlarged or increased in capacity. This Section shall not apply to developments that consist solely of interior alterations or improvements or change of use that does not alter the building shell.
7. Based on the evidence provided, work on the subject site has increased in capacity because of the number of gravel trucks and trailers coming and going from the site on a daily basis. Therefore, the exemption in Section 55.2(2) does not apply, and the landscaping provisions in Section 55 do apply.
8. The conditions imposed by Transportation Services are necessary for this site because there is only one access provided to the subject site and safety concerns are relevant.
9. Based on the above, it is the opinion of the Board, that the proposed development, with the conditions imposed, would 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.”

Note: The Board notes, based on the evidence provided, that in addition to the Temporary Storage Use, there is a General Industrial Use operating on the subject site for which an approved Development Permit has not been issued.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.

4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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*, R.S.A. 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: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.

Ms. D. Poon Phillips, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

cc:



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DATE: July 26, 2013
APPLICATION NO: 59593113-017
FILE NO.: SDAB-D-13-141

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated June 3, 2013, from the decision of the Development Authority for permission to:

Increase the amount of Commercial Space from 10, 347 square feet to 19,773 square feet on the main floor of a Mixed Use Building by reducing the available amount of parking stalls and construct exterior alterations (minor façade changes to ground level retail area)

on Lot 4, Block L, Plan 0521161, located at 8030, 8046, 8116, 8128, 8136 – 102 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 27, 2013 and July 11, 2013. The decision of the Board was as follows:

June 27, 2013

SUMMARY OF HEARING:

At the outset of the hearing, Mr. D. Hamilton, representing GMH Architects, provided the following information:

1. Legal counsel retained by the Appellant and who had previously represented the Appellant at the previous hearing of this matter was not able to attend today's hearing due to prior commitments.
2. They are requesting that this matter be tabled to a date when legal counsel is available to represent them given he is familiar with the matter and they feel it would be beneficial to have legal representation.
3. The development permit application had been denied due to a previous Subdivision and Development Appeal Board decision.
4. He was not aware of any objections to the tabling of this matter.

MOTION:

“that SDAB-D-13-141 be TABLED to July 11, 2013 at the verbal request of the Appellant.”

July 11, 2013

MOTION:

“that SDAB-D-13-141 be raised from the table.”

SUMMARY OF HEARING:

“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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to increase the amount of Commercial Space from 10,347 square feet to 19,773 square feet on the main floor of a Mixed Use Building by reducing the available amount of parking stalls and construct exterior alterations (minor façade changes to ground level retail area) located at 8030, 8046, 8116, 8128, 8136 – 102 Street NW. The subject site is zoned DC1 Direct Development Control Provisions. The development permit application was refused because one condition of approval by a previous Subdivision and Development Appeal Board stated that 179 parking spaces shall be provided and the proposed development will invalidate that condition with the proposed decrease in the number to 151 parking spaces.

The Board notes that three letters of opposition were received, copies of which are on file.

The Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, Chapter M-26, which 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 council, there is no appeal to the subdivision and development appeal board, or is made by a development

SUMMARY OF HEARING (CONTINUED):

authority, the appeal is limited to whether the development authority following 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 Board heard from Mr. James Murphy, Legal Counsel for the Appellant, GMH Architects, represented by Mr. David Hamilton who was also in attendance. Mr. Murphy provided a detailed written submission, Exhibit "A", a copy of which is on file. Mr. Murphy provided the following information in support of the appeal:

1. It was his opinion that the Development Authority did not follow the direction of Council because the proposed development is a Permitted Use in the DC1 Zone and was also a Permitted Use in the CB2 Zone before the subject site was re-zoned to DC1.
2. The Historic View Corridor of the Strathcona Area Redevelopment Plan was established after the proposed development was approved and after construction had commenced on the subject site. Therefore, the proposed development was granted an exception.
3. Section 11.2(4) of the Edmonton Zoning Bylaw states that the Development Officer shall approve, without conditions, or with such conditions as required to ensure compliance, an application for development of a Permitted Use provided the development complies with the regulations of this Bylaw.
4. It was his opinion that the Development Authority failed to follow the direction of Council by refusing the proposed development.
5. The proposed development requires 123 onsite parking spaces and 151 onsite parking spaces are being provided which exceeds the minimum required number of parking spaces.
6. It was his opinion that the proposed development complies with the regulations of the Edmonton Zoning Bylaw and that a development permit should have been issued.
7. The Subdivision and Development Appeal Board approved the original development permit in December 2006 with the condition that 179 parking spaces be provided which exceeded the minimum required number of parking spaces.
8. It was his opinion that in refusing this permit, the Development Authority did not consider the previous decision of the Subdivision and Development Appeal Board because the minimum required number of onsite parking spaces is still being exceeded.

SUMMARY OF HEARING (CONTINUED):

Mr. David Hamilton clarified that parking is provided on both the basement and the main floor level. The number of parking spaces proposed on the main floor will be reduced to increase the amount of commercial space on the main floor.

The Board then heard from Mr. Mark Harrison, representing the Sustainable Development Department who provided the following information:

1. The proposed development fully complies with the requirements of the Edmonton Zoning Bylaw except for the conditions imposed on the previous approval by the Subdivision and Development Appeal Board.
2. All City departments, including the Heritage Officer, had been consulted regarding the proposed change to this development.
3. The parking requirements were established under the Pedestrian Commercial Shopping Street Overlay.

Mr. Harrison provided the following responses to questions:

1. He noted that a variance had previously been granted by the Subdivision and Development Appeal Board with regard to the number of loading spaces required and it was his opinion that that variance was not part of this application.
2. The only matter before the Board was the previous condition to provide 179 onsite parking spaces.

The Board then heard from Mr. Kuckertz who owns a building on the northeast corner of 102 Street and 80 Avenue. Mr. Kuckertz made the following points in opposition to the proposed development:

1. Two recent condominium developments east of his building have seriously exacerbated parking problems in this area.
2. He noted that his building was one of the first new developments in the area in 1996. He was not aware that this development exceeded the minimum required parking spaces when it was approved.
3. He serves as Honorary Consul of the Federal Republic of Germany and the lack of parking creates problems for many older people who visit his office.
4. It was his opinion that there should not be any further relaxation of the parking requirements in this area.
5. It was his opinion that the proposed increase in commercial space would inevitably lead to higher parking demands.

SUMMARY OF HEARING (CONTINUED):

At this point, the Presiding Officer asked Mr. Kuckertz if he wished to seek a postponement of the hearing to further explore the legal aspects of the authority of the Board since he had not been provided with the Appellant's submission prior to the hearing, but he declined.

Mr. Murphy made the following points in rebuttal:

1. Any attempt to table this hearing would be an exercise in delay, because it is indisputable that the proposed development is a Permitted Use in the DC1 Zone. Any party in opposition should have been prepared to argue the provisions of the Direct Control District, and everyone would have been notified of the rezoning application.
2. It was his opinion that the Development Officer reviewed this application under the assumption that a variance had already been granted in the loading space requirement and he declined to comment further.
3. The parking regulations of the Edmonton Zoning Bylaw consider residential, commercial and visitor parking requirements.
4. He acknowledged that the minimum requirement to provide 123 parking spaces is based on the general regulations for parking in commercial spaces and that it could increase for several other specific types of commercial uses. However, it was his opinion that there is a significant buffer provided in this case to allow for additional uses.
5. He reiterated that he is not seeking a variance in the minimum required number of loading spaces.

DECISION:

that the appeal be ALLOWED and the DEVELOPMENT GRANTED

REASONS FOR DECISION:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states, "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."

REASONS FOR DECISION (CONTINUED):

2. Section 11.2(4) of the Edmonton Zoning Bylaw states that the Development Officer shall approve, without conditions, or with such conditions as required to ensure compliance, an application for development of a Permitted Use provided the development complies with the regulations of this Bylaw.
3. Section 3 of the DC1 Direct Development Control Provision, states that Permitted and Discretionary Uses in this Provision shall be as prescribed in the CB2 General Business Zone with the addition of Live Work Units as a Permitted Use. Section 340.2(10) of the CB2 Zone states that General Retail Stores are a Permitted Use.
4. The Development Authority did not follow the direction of City Council because the proposed development is a Permitted Use with no variances required.
5. Based on the evidence submitted, 151 parking spaces are provided and 123 parking spaces are required under Section 4(1) of the DC1, which states that the development regulations prescribed in the CB2 General Business Zone shall apply.
6. The Board notes that the affected property owner who appeared in opposition to the proposed development cited traffic and parking concerns as did the property owners who submitted letters of opposition. However, the proposed development exceeds the parking requirements under the DC1 Zone.
7. The Board notes that a variance was granted for the required number of loading spaces with the approval of SDAB-D-07-008 on January 26, 2007.
8. Based on the above, it is the opinion of the Board, that the proposed development would 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.”

IMPORTANT INFORMATION FOR APPLICANT/APELLANT

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2. 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.

3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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*, R.S.A. 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.

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