



**Subdivision and  
Development Appeal Board**

Office of the City Clerk  
Main Floor, Churchill Building  
10019 – 103 Avenue NW  
Edmonton, AB T5J 0G9  
Telephone: (780) 496-6079  
Fax: (780) 496-8175

DATE: July 19, 2013  
APPLICATION NO: 139288008-001  
FILE NO.: SDAB-D-13-149

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated June 10, 2013, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (add 3.81 metres by 15.24 metres of hardsurfacing to the North side of the property)

on Lot 42, Block 31, Plan 8022116, located at 2844 – 123 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 4, 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 refuse an application to construct exterior alterations to a Single Detached House (add 3.81 metres by 15.24 metres of hardsurfacing to the North side of the property), located at 2844 – 123 Street NW. The subject site is zoned RF1 Single Detached Residential Zone. The development permit application was refused because the proposed driveway does not lead directly to a Garage or Parking Area, a Parking Area shall not be located in a Front Yard or flanking Side Yard, the proposed parking area is located within the Front Yard, and vehicles shall not be located on the landscaped portion of the Yard and landscaping shall be as set out in Section 55.2(4)(b) of the Edmonton Zoning Bylaw.

## SUMMARY OF HEARING CONTINUED:

The Board notes that two letters were received in opposition to the proposed development.

Prior to the hearing, documentation was submitted by the Sustainable Development Department to support the Development Authority's decision of refusal.

Prior to the hearing, the Appellant submitted documentation that contained photographs of the neighbourhood.

The Board heard from the Appellant, Mr. Stanley Abraham, who was accompanied by his father, Mr. Joseph Abraham, the owner of the subject property, together they made the following points:

1. They stated that in 1987 they purchased the property in the Blue Quill estate area where there are oversized lots.
2. They stated that the lots were marketed as Recreational Vehicle (RV) lots.
3. Mr. S. Abraham stated that his grandmother sold the house to Mr. Palmer, the neighbour in opposition to the proposed development.
4. They stated that Mr. Palmer had subsequently removed an RV parking pad that had existed in his Rear Yard.
5. Mr. S. Abraham stated that he does not live at the subject property, but moved into the area in 2012.
6. He stated that he owns a home building business and has a good relationship with his neighbours.
7. They provided the Board with photographs of the neighbourhood, marked Exhibit A.
8. They stated that there are other RV parking pads in the neighbourhood and he was not aware that a permit was required for the concrete pad.
9. They provided the Board with a petition with 27 signatures from neighbouring property owners in support of the proposed development, marked Exhibit B.
10. Mr. S. Abraham stated that although he purchased a motor home for his family and for his father to use, he parks the RV at his father's property.
11. He stated that the area is a family oriented neighbourhood and that there are several RV's in the area.
12. He has not received any complaints from other neighbouring property owners with regard to the RV.
13. The only neighbour in opposition to the parking of the RV is in attendance at the hearing.

## SUMMARY OF HEARING CONTINUED:

14. They stated that they received a large amount of community support and confirmed that they will comply with the parking time requirements of the Edmonton Zoning Bylaw.

In response to questions by the Board, Mr. S. Abraham and Mr. J. Abraham provided the following information:

1. They stated that this lot has a 120 feet Front Yard, the largest in the neighbourhood.
2. They stated that the shape of the lot is unique and could be considered as a corner lot.
3. With regard to the reference by the Development Authority that there is heavy traffic volume in the neighbourhood, they stated that there are two accesses to this area and that different routes are used to enter this neighbourhood.
4. He stated that 28 Avenue or 123 Street are used on a 50/50 basis and he believes that there is not a high traffic volume in the neighbourhood.
5. He stated that when the motor home is not parked on the new RV pad, vehicles parked on the driveway of the subject Site as well as in the neighbourhood, can still be seen.
6. They stated that if there was a concern from neighbouring property owners, they would have constructed buffers on their property.
7. They stated that they did not apply for a Development Permit as they were not aware a development permit was required.
8. They applied for a Development Permit as a result of an inspection from a Bylaw Enforcement Officer as a result of a complaint from a neighbouring property owner.
9. They stated that they continued to work on the driveway and poured the cement before the development permit application was refused.

The Presiding Officer noted that, although RV parking in the Blue Quill neighbourhood may be common, the Board has to assess this appeal in terms of its effect on the most directly affected neighbours, the abutting three properties to the north.

10. When asked to address this statement, they did not concede that the proposed development had a negative effect on the neighbouring property owners.
11. They stated that the RV is approximately 20 feet away from the neighbouring property owner.
12. Mr. S. Abraham stated that he does not park the RV on his own property as there is more room on his father's property.

## SUMMARY OF HEARING CONTINUED:

13. They stated that there are approximately 35 properties in the neighbourhood with extended driveways that require development permits.

The Board then heard from Mr. Chacko, who made the following points:

1. He is a relative of the Appellant and is in support of the proposed development.
2. He stated that he is familiar with the Respondent's property as it belonged to a family member.
3. He stated that Mr. Palmer was aware of the RV parking area when he purchased his property.
4. He confirmed that they have another location off-site to park the RV in the winter.

In response to questions by the Board, Mr. Chacko provided the following information:

1. He stated that his residence is on the northeast side of Edmonton.
2. He stated that RV parking was being done on the property prior to the parking pad being poured.
3. With regard to whether or not Mr. Palmer is an effected party, he stated that, in his opinion, he is not an effected party as there is sufficient room between the properties and he does not see Mr. Palmer using his rear yard on a regular basis.

The Board then heard from Mr. Palmer, who made the following points in opposition to the proposed development:

1. He made reference to his previous submission that contained a review of how the proposed development had come to his attention and the actions he had taken. This submission also contained pictures showing the impact of the RV parking on views from his kitchen and dining room.
2. He stated that the Appellant is familiar with the building process and should have known a development permit was required.
3. He stated that despite the Stop Work Order, work on the subject Site continued.
4. He stated that there is an excess of RV parking on the street in the neighbourhood.
5. He stated that Mr. S. Abraham is the owner of the RV; therefore, it should be parked on his property.

## SUMMARY OF HEARING CONTINUED:

6. He stated that he removed the concrete parking pad on his property and developed a garden in that area.

In response to questions by the Board, Mr. Palmer provided the following information:

1. With regard to Community Consultation, he stated that he did not speak to any of his neighbours. In his opinion, it was not his obligation to compile Community Consultation.
2. He stated that his immediate adjacent neighbour to the west will not be negatively affected as there is a row of trees between the two properties.
3. With regard to the petition in support of the proposed development, he stated that those neighbours park RV's in their Side Yards or may not have the required permits to park their RV's.
4. He stated that the property south of the subject Site will not be affected by the proposed development as it is screened by a row of trees.
5. He stated that planting trees between the two properties will not address the negative visual effect on his property as it will take several years for the trees to mature.

In rebuttal, Mr. S. Abraham and Mr. J. Abraham made the following points:

1. They stated that they are willing to plant trees between the two properties if the proposed development is approved.
2. He provided the Board with photographs shown on the overhead projector from his phone of properties he has developed that have larger trees planted on the property.
3. He will be able to plant larger trees rather than small ones on the property if required.

In response to questions by the Board, Mr. S. Abraham and Mr. J. Abraham provided the following information:

1. With regard to whether or not planting larger trees will impact the Rear Yard, he stated that larger trees will screen the view of the road from the neighbour.
2. He stated that whether or not the RV is located on the subject Site, Mr. Palmer will be able to see any vehicles parked on the existing driveway.

## SUMMARY OF HEARING CONTINUED:

3. He stated that Mr. Palmer is able to see the property from one window and not six windows as indicated.
4. He stated that Mr. Palmer was aware of the RV pad when he purchased the property.

Mr. Chacko requested to make a further statement and the Presiding Officer denied his request stating that the hearing was concluded.

## DECISION:

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

## REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
2. Based on the evidence submitted, RV parking is characteristic of the neighbourhood. However, the Board finds that many of these parking areas may be legal non-conforming developments built prior to the significant Zoning Bylaw amendments introduced in 2011.
3. Based on the evidence submitted, the Board finds that although RV parking may be characteristic of the neighbourhood and in many instances may not materially interfere with or affect the use, enjoyment or value of adjacent properties, the configuration of the subject Site and the immediate neighbouring property to the north is such that the neighbouring property will be negatively affected.
4. Section 44.6 of the Edmonton Zoning Bylaw states that a Parking Area, when comprised of parking spaces required under this Bylaw, may project into a required Setback or Separation Space provided that no Parking Area in any Zone shall be located within the Front Yard. This shall not prohibit the use of a Front Yard for Driveways. The proposed development is located within both the Front Yard and north Side Setback of the subject property.

## REASONS FOR DECISION CONTINUED:

5. Section 45.7 states that in the Front Yard of any Site in any Residential Zone, or in the case of a corner Site, in the Front Yard or the flanking Side Yard in any Residential Zone:
  - a. vehicles shall not be located on the landscaped portion of the Yard; and
  - b. vehicles shall only be allowed on a Driveway or within an attached or detached Garage.
6. Section 54.1(4)(a)(b) states that the Front Yard of any at-grade Dwelling unit in any Residential Zone, or in the case of a corner Site, the Front Yard or the flanking Side Yard in any Residential Zone, may include a maximum of one Driveway. The area hardsurfaced for a Driveway, not including the area used as a walkway, shall have a minimum width of 3.1 metres and a maximum width that shall be calculated as the product of 3.1 metres multiplied by the total number of adjacent side-by-side parking spaces contained within the Garage. The proposed development is in addition to an existing driveway leading to a three-car garage.
7. Based on the evidence submitted, the RV can be parked on the existing driveway in front of the three car garage from April 1, 2013 to October 31, 2013.
8. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.”

**IMPORTANT INFORMATION FOR 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*, 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.
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 Sustainable Development Department, located on the 5<sup>th</sup> 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.

Mr. N. Somerville, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

cc:



# **SDAB-D-13-150**

Application No. 138051779-001

An appeal by Avinash K. Sandhu to develop a Secondary Suite to a Single Detached House (existing prior to December 31, 2006) on Lot 31, Block 25, Plan 2041W, located at 10928 – 68 Avenue NW, was **TABLED TO AUGUST 15, 2013.**



**Subdivision and  
Development Appeal Board**

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Main Floor, Churchill Building  
10019 – 103 Avenue NW  
Edmonton, AB T5J 0G9  
Telephone: (780) 496-6079  
Fax: (780) 496-8175

DATE: July 19, 2013  
APPLICATION NO: 135830848-001  
FILE NO.: SDAB-D-13-151

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated May 22, 2013, from the decision of the Development Authority for permission to:

Convert a Single Detached House to a Professional, Financial, and Office Support Use building and to construct an addition (office addition - 4.0 metres by 4.15 metres) and exterior and interior alterations (roof restructure for Second Floor expansion, tenant renovations)

on Lot 282, Block 3, Plan B4, located at 10712 – 103 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 4, 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 convert a Single Detached House to a Professional, Financial, and Office Support Use building and to construct an addition (office addition - 4.0 metres by 4.15 metres) and exterior and interior alterations (roof restructure for Second Floor expansion, tenant renovations), with variances granted in the number of required parking spaces, subject to conditions, located at 10712 – 103 Street NW. The subject site is zoned CB1 Low Intensity Business Zone. The approved development permit application was appealed by an adjacent property owner.

## SUMMARY OF HEARING CONTINUED:

The Board notes that no letters were received in support of the proposed development.

At the outset of the hearing, the Presiding Officer informed the parties in attendance that the Appeal does not relate to compliance with the Alberta Building Code or issues related to Encroachment. The Presiding Officer indicated that, since the proposed development is a Permitted Use, the issue is the variances granted by the Development Authority with regards to parking.

The Board heard from the Appellant, Mr. Giang, who made the following points:

1. He provided the Board with a submission, marked Exhibit A.
2. He stated that he owns the property immediately adjacent to the south of the subject Site.
3. He stated that there is a new structure across the street from the subject Site with commercial space on the main floor and residential space on the upper level.
4. There is not sufficient parking for the commercial building and he questioned the variance granted for that development on the subject Site.
5. The subject Site is listed for sale “as is” which misinterprets the information provided to the Transportation Department with regard to their support of the parking deficiency.
6. With regard to the neighbouring property owner to the north who was in support of the proposed development, he stated that he was not made aware of the approved tandem parking and was now in opposition to the proposed development.
7. Mr. Giang addressed several requirements of the Edmonton Zoning Bylaw regarding the transitions taking place in the area with regard to parking etc.
8. He indicated that he has other concerns regarding a caveat on the property requiring it to remain a residential property.

In response to questions by the Board, Mr. Giang provided the following information:

1. He confirmed that one of the four properties in the area that is in transition, is one of his properties.
2. He confirmed that there are no parking meters on either side of the street, in front of his property, or on 107 Avenue.

## SUMMARY OF HEARING CONTINUED:

3. He confirmed that his business is a travel agency and his clientele can park on the street or behind his building.
4. With regard to the property being sold “as is” and what impact it will have regarding the change in Use, the need for additional parking has not been addressed.
5. With regard to the new construction taking place on the subject Site, he stated that he was uncertain if that would add to the fire hazard or affect the encroachment on his property.

The Board then heard from the Respondent, Ms. Fassmann, who was accompanied by Mr. Shah, who together made the following points:

1. They provided the Board with a submission, marked Exhibit B, dealing with the issues of fire prevention, parking, encroachment and support for the proposed development.
2. The subject Site was purchased in 2002 and is owned by Mr. Shah’s sister.
3. The subject Site is a Single Family Dwelling and was purchased for a revenue property.
4. The building was damaged by a fire and the insurance company and the City determined that the house could be repaired and maintain the property as a Single Family Dwelling for rental purposes.
5. Although the property is listed to be sold “as is”, the house was repaired and renovated and the sale of the property will be with the current renovated condition of the existing dwelling.
6. They stated that the subject Site has been thoroughly inspected.
7. Although the main floor and foundation encroached, to give some relief to the adjacent property, they inset the second floor 4 feet, 2 inches from the main floor walls and the existing footprint as to avoid further encroachment on Mr. Giang’s property.
8. They stated that the subject property will accommodate the commercial Use and the City has set the parking standards.
9. They stated that they do not accept Mr. Giang’s evidence that the property to the north, owned by Mr. Fisher, is no longer in support of the proposed development.
10. They stated that the area is in transition and this type of Use may change; however, any change in Use or intensity of Use will be addressed by the City to ensure future development will meet the Edmonton Zoning Bylaw.

In response to questions by the Board, Ms. Fassmann and Mr. Shah provided the following information:

## SUMMARY OF HEARING CONTINUED:

1. He clarified that the Setback of the second floor is 1.22 metres in from the foundation wall in order to create a separation between the adjacent property.
2. With regard to the letter of opposition from Mr. Fisher, they stated that his concern regarding parking was not indicated in his letter or in the petition.
3. They stated that the initial petition addressed the change of Use and construction issues and not the parking issue.
4. Ms. Fassmann addressed the issue with regard to fire protection, construction materials, and the Development Permit that was issued.
5. With regard to parking, Mr. Shah clarified that most of the business work is done off-site which will not increase traffic or parking in the area.
6. They confirmed that the subject Site will be used for office purposes only and all of their other property management services will emanate out of their warehouse location.
7. They stated that the subject Site was built to rehabilitate the Single Detached Housing Use after the fire; however, the City encouraged them to change the Use to comply with the CB1 Low Intensity Business Zone.
8. Ms. Fassmann stated that she made several attempts to speak with Mr. Giang to address his concerns but was unable to contact him.
9. They confirmed that although the proposed development has four office areas and two reception areas in the building, there will be only two permanent administrative staff working from the office.

In rebuttal Mr. Giang made the following points:

1. He stated that with four offices and two reception areas proposed, six parking spaces are definitely required.
2. He stated that the petition submitted does not outline the change in Use or the parking issue, which is the main issue.
3. He stated that although renovations are almost complete, the fire code has not been addressed and a Building Permit has not been provided.
4. He stated that the Respondent has applied for a Development Permit after construction was almost complete.
5. He stated that he was concerned about fire safety, and that the material of the wall is wood, which is not fire rated. The limited separation between the buildings will create a fire hazard on his property.

## SUMMARY OF HEARING CONTINUED:

6. He reiterated that he is concerned with regard to the lack of parking in the neighbourhood.

## DECISION:

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

The Development Authority's decision of approval contains the following variances and conditions:

Variances:

1. the deficiency of 2 required on-site Parking Spaces; and
2. the tandem parking is relaxed from 0 to 2 stalls allowed in tandem.

Conditions:

1. In situations where lighting of off-street parking and loading facilities is to be provided, the lighting shall be arranged, installed and maintained to deflect, shade and focus light away from any adjacent land Uses.
2. In parking areas and similarly congested locations, curbs and other protective measures shall be used to protect adjacent fences, walls, boulevards, landscaped areas or buildings on the Site or an adjacent Site;
3. All required parking and loading facilities shall be clearly demarcated, have adequate storm water drainage and storage facilities, and be hardsurfaced.
4. Exterior lighting shall be provided in a manner that provides safety for pedestrians on the Site and adjacent to it, and in accordance with Section 51 of this Bylaw.
5. Bicycle Parking Spaces shall be provided for the Development (Reference Section 54.3).
6. Transportation Services will not permit a gravelled yard/access to a paved roadway. The access must be hard surfaced from the alley hard surfacing into the site for a minimum distance of 10 m. A portion of the hard-surfacing will occur on road right-of-way and the remaining portion on private property, as shown on Enclosure I. The pavement will limit loose gravel from carrying onto the paved surface of the adjacent roadway, from the gravelled yard.

## DECISION CONTINUED:

7. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as shown on Enclosure I.
8. 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](http://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.
9. Any hoarding or construction taking place on road right-of-way requires an OSCAM permit. It should be noted that the hoarding must not damage boulevard trees. The owner must call Transportation Operations at 780-442-6458 to arrange for the permit.
10. Any alley, sidewalk, or 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 alley, sidewalks and 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.

Transportation Conditions:

1. Transportation Services will not permit a graveled yard/access to a paved roadway. The access must be hard surfaced from the alley hard surfacing into the site for a minimum distance of 10 m. A portion of the hard-surfacing will occur on road right-of-way and the remaining portion on private property, as shown on Enclosure 1. The pavement will limit loose gravel from carrying onto the paved surface of the adjacent roadway, from the gravelled yard.
2. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as shown on Enclosure 1.

## DECISION CONTINUED:

3. 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.
4. Any hoarding or construction taking place on road right-of-way requires an OSCAM permit. It should be noted that the hoarding must not damage boulevard trees. The owner must call Transportation Operations at 780-442-6458 to arrange for the permit.
5. Any alley, sidewalk, or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section I5.5(f) of the Zoning Bylaw. The alley, sidewalks and 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.

ADVISEMENTS

Transportation Services does not object to the proposed parking deficiency of 2 stalls (required 6 stalls; provided 4 stalls).

Bicycle parking has not been identified on site. Bicycle parking should meet the requirements of the Zoning Bylaw.

Should you require any additional information please contact Mary Modrovic at 780-496-4013.

## REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a Permitted Use in the CB1 Low Intensity Business Zone.



## REASONS FOR DECISION CONTINUED:

2. Based on the evidence submitted, the Board acknowledges the Appellant's concern with regard to parking. The Board finds that the provision of four parking spaces on the property, two of which will be in tandem is sufficient to meet the needs of the proposed development.
3. Based on the evidence submitted, there is a major transit route in close proximity to the proposed development and the proposed future rapid transit service will minimize any impact of parking in the neighbourhood.
4. The Board finds that this area is in transition and the previous Use on this property presently is neither a Permitted nor a Discretionary Use.
5. Based on the above, it is the opinion of the Board, 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."

**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 5<sup>th</sup> 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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

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Mr. N. Somerville, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

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DATE: July 19, 2013  
APPLICATION NO: 134939784-001  
FILE NO.: SDAB-D-13-152

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated June 10, 2013, from the decision of the Development Authority for permission to:

Change the Use of the second Floor from a General Retail Store into a Specialty Food Services having 114.5 square metres of Public Space with a maximum of 86 seats (Casablanca)

on Lot 16, Block 132, Plan RN4, located at 10762 – 82 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 4, 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 change the Use of the second Floor from a General Retail Store into a Specialty Food Services having 114.5 square metres of Public Space with a maximum of 86 seats (Casablanca), with a variance granted in the minimum required number of on-site vehicular parking spaces, subject to conditions, located at 10762 – 82 Avenue NW. The subject site is zoned CB2 General Business Zone. The approved development permit was appealed by an adjacent property owner.

## SUMMARY OF HEARING CONTINUED:

The Board notes that one letter was received in opposition to the proposed development from the Garneau Community League Planning Committee and one letter in support from the Old Strathcona Business Association.

The Board heard from Mr. Horn, representing the Appellant, 1110987 Alberta Ltd., who made the following points:

1. He has been a property owner in this area since 1976.
2. He has received complaints from his residential and commercial tenants about patrons from the Hookah Bar being on the roof.
3. He stated that he installed a gate to the roof access but it did not prevent individuals from accessing the roof top.
4. He stated, that in his opinion, a Hookah Bar is not a Specialty Food Service as it is the main operation of the business.
5. He stated that he received a letter from one of his tenants indicating that the Police were called due to the noise level on the street outside the Hookah Bar. His tenant was informed that the Police would monitor the area.
6. He stated that his letter also indicated that individuals were climbing on the Decadence Sign and banging on windows. However, they could not confirm if it was patrons from the Hookah Bar.
7. There has been an increase in traffic in the area since the Hookah Bar opened in July 2012 and they are now just applying for a development permit.
8. He stated that the hours of operation of the Hookah Bar are Monday to Sunday, 7:00 p.m. to 4:00 a.m. His tenant witnessed lights outside and broken bottles and called the police several times.
9. He stated that since being a property owner in the area, a window was broken recently in the retail space that he owns. After the window was broken his tenants witnessed individuals returning back to the Hookah Bar.
10. He stated that there are 24 on-street parking spaces which is approximately half a block of parking, and there are approximately 15 to 20 businesses on the block that share this parking.
11. There is an apartment building across the rear lane from the Hookah Bar that is affected by the noise level; however, he is not certain if complaints have been made regarding this.
12. He provided the Board with photographs showing the Sign on the door of the Hookah Bar illustrating a photograph of a Hookah. However, the Sign does not state that the Hookah Bar is a Specialty Food Service facility.

## SUMMARY OF HEARING CONTINUED:

The Presiding Officer indicated that the proposed development for a Specialty Food Services facility for the subject Site is a Permitted Use in the CB2 General Business Zone.

13. Mr. Horn stated that he disagreed with the Use class of the proposed development and that Hookah Bars are under review in the City of Edmonton and banned in other jurisdictions.

In response to questions by the Board, Mr. Horn provided the following information:

1. With regard to the letter received in support of the proposed development by the Old Strathcona Business Association, he stated that he believes they support any business in the area.
2. He stated that his concerns are the same as that of the letter that was received in opposition to the proposed development from the Garneau Community League Planning Committee.
3. With regard to Whyte Avenue being busy and well served by public transportation, he stated that 24 parking spaces required for the Hookah Bar will use approximately half of the on-street parking that is shared by other businesses in the area.
4. He confirmed that his property has two parking spaces for the residential use and four parking spaces for the commercial use.
5. He stated that his main concern is the operation of the Hookah Bar that has been in operation since July 2012 without a permit.
6. He confirmed that the Police have issued liquor and tobacco violations to the Hookah Bar.
7. With regard to whether the Police calls had resulted in reports related to the Hookah Bar, he stated that it took the Police 45 minutes to arrive at the Bar and the patrons were already gone.
8. He stated that traffic and parking will increase in the neighbourhood with the hours of the Hookah Bar being from 7:00 p.m. to 4:00 a.m.
9. He stated that the increase in traffic and parking will increase vandalism in the area.
10. In his opinion, although the proposed development is fronting as a Specialty Food Services business, he believes it is a Hookah Bar.

The Board then heard from Mr. Farah, representing the Respondent, 1659868 Alberta Ltd., who made the following points:

1. He stated that Mr. Horn misunderstands the Use of the proposed development.

## SUMMARY OF HEARING CONTINUED:

2. He stated that he applied for a business license to operate the Hookah Bar under the pre-existing development permit.
3. He stated that only non-alcoholic beverages are sold at the Hookah Bar.
4. He stated that he was informed by the City that the operation of the business was not allowed to sell food or beverage products and that a Development Permit was required to operate a Specialty Food Services Use.
5. He stated that there are Hookah Bars in Edmonton that are also restaurants; however, he does not want to operate a full restaurant operation.
6. He stated that there are approximately 80 clients accessing the Hookah Bar per evening and the average age of the patrons is approximately 18 to 25 years.
7. He stated that the majority of his clientele walk or take public transportation to the Hookah Bar.
8. He stated that the water pipes last approximately 30 to 45 minutes long and the patrons leave after this time period.
9. He stated that he has been a business neighbour to Mr. Horn for approximately ten months and he has never met Mr. Horn until now.
10. He stated that he contacted Mr. Horn in May to discuss the parking variance and he was informed that Mr. Horn was not familiar with what a parking variance was. He explained the variance to him and other neighbouring property owners.
11. He stated that parking is at a premium on Whyte Avenue and each business along Whyte Avenue provides approximately three to four parking spaces.
12. He stated that by having a permit for a Specialty Food Services Use will not change the parking congestion on Whyte Avenue.
13. He stated that the tenant to the east of the Hookah Bar is Mr. Horn's tenant who complained about noise. However, he spoke to the tenant on the west side who stated they had no issues with noise from the Hookah Bar. However, they were concerned with noise coming from the tenants in the other building having parties with people on the roof top.
14. He provided the Board with photographs showing empty plastic cups and bottles on the roof that were not from the patrons using the Hookah Bar.

## SUMMARY OF HEARING CONTINUED:

15. He stated that he has not had any complaints from Mr. Horn regarding the Hooka Bar until now.
16. He stated that Mr. Horn indicated that he has no issue with the parking variance.
17. He stated that, although the business was in operation in May, Mr. Horn has not contacted him until now.

In response to questions by the Board, Mr. Farah provided the following information:

1. He received letters of support for the proposed development, which were submitted with the proposed plans.
2. He confirmed that he added the food category when applying for the development permit application to serve food with the non-alcoholic beverages.
3. The Use of the building was originally for a retail business and changing the Use changes the time customers will be on the premises, which is related to parking.
4. He confirmed that there will be approximately 80 clients accessing the Hookah Bar per evening for approximately 30 to 45 minutes.
5. He confirmed that parking is a premium on Whyte Avenue and that the Old Strathcona Business Association are in support of the proposed development and the parking variance.
6. He stated that Whyte Avenue is a pedestrian friendly area and that the proposed development will not negatively affect other businesses and parking in the area.
7. In his opinion, there will not be an increase in traffic with regard to the proposed development.
8. With regard to whether or not he compiled Community Consultation, he stated that he did speak to neighbouring property owners; however, not all of the neighbouring property owners within the 60 metre notification radius. He stated that he provided the Community Consultation to the Development Authority with the development permit application.
9. With regard to the alcohol violation, he stated that the ticket was thrown out when he appeared in Court in March as it was a misunderstanding with the Hookah Bar.
10. With regard to the window being broke in a neighbouring business, he stated that Whyte Avenue is busy and there are other businesses in the area that are also vandalised.

## SUMMARY OF HEARING CONTINUED:

The Board then heard from Mr. Davison, Executive Director of the Old Strathcona Business Association. Mr. Davison made the following points:

1. With regard to parking, 30 percent of people use vehicles, six percent park on Whyte Avenue, but the majority use alternate transportation.
2. The neighbourhood is becoming more pedestrian friendly.
3. He is aware of the public involvement with the Hookah Bar and is in support of the proposed development.
4. The issues that the Old Strathcona Business Association deals with are related to Land Use.
5. In his opinion, the hours of operation for the Hookah Bar will not negatively affect parking in the area.
6. In his opinion, there are other businesses in the area that have been granted parking variances.

In rebuttal Mr. Horn made the following points:

1. He stated that Mr. Farah contacted him two to three weeks ago regarding the parking variance and he told Mr. Farah that he would discuss the issue with his renter.
2. He provided the Board with an article from the Edmonton Sun regarding the stance on Hookah Bars in Edmonton.

Since this was new evidence, Mr. Farah was then allowed to make the following points:

1. He stated that the article in the Edmonton Sun about Hookah Bars is false information.
2. He stated that the Hookah does not contain tobacco.
3. He stated that the Police have not visited the establishment due to complaints.

In final rebuttal, Mr. Horn indicated that he did not have anything further to say.

## DECISION:

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



## DECISION CONTINUED:

The Development Authority's decision of approval contains the following variance and condition:

Variance:

Section 54.1.1.b(ii) relaxed - the requirement to provide additional onsite vehicular parking stalls to accommodate the proposed change of Use is waived.

Condition:

This approval is for a Specialty Food Service. Specialty Food Service means development where limited types of prepared foods and beverages, excluding alcoholic beverages, are offered for sale to the public, for consumption within the premises or off the Site. Reference Section 7.4(47).

## NOTES:

- 1) Signs require separate Development Applications.
- 2) 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.
- 3) This approval 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."

## REASONS FOR DECISION:

The Board finds the following:

1. The proposed development, a Specialty Food Service Use as defined in Section 7.4(47) of the Edmonton Zoning Bylaw and, is a Permitted Use in the CB2 General Business Zone.
2. The Board accepts the evidence from Transportation Services that, given the parking circumstances on Whyte Avenue, the variance in parking is reasonable.

## REASONS FOR DECISION CONTINUED:

3. Based on the evidence submitted, the hours of operation of the proposed development are different than those of several surrounding businesses, thereby mitigating parking concerns.
4. There is support for the proposed Use from the Old Strathcona Business Association.
5. The letter received in opposition from the Garneau Community League Planning Committee did not address the issue of parking. The letter was related to the nature of the proposed development which is not an issue before the Board.
6. Much of the evidence presented regarding noise and disruptive behaviour was hearsay, contradictory and could not be linked to the proposed development.
7. Based on the above, it is the opinion of the Board, 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.”

**IMPORTANT INFORMATION FOR APPLICANT/APELLANT**

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
2. 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 5<sup>th</sup> 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.

Mr. N. Somerville, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

cc: