

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

PRESIDING OFFICER: Don Wielinga
PANEL MEMBER: Carol Mah
PANEL MEMBER: Michael Kartusch

BETWEEN:

Aggregate Design Studio

Appellant

and

CITY OF RED DEER

Represented by Sam Love, Development Officer and Jared McBeth, Assistant City Solicitor

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board grants the appeal. The Board revokes the decision of the Municipal Planning Commission which refused the Appellant's application for a development permit for a Discretionary use of an Events Centre as an Accessory Use to a Hotel at 3310 – 50 Avenue, Red Deer. The Board grants a Development Permit for an Events Centre as an Accessory Use to a Hotel with 551 parking stalls, as shown on the plans dated April 24, 2023, on the lands zoned C4, located at 3310 50 Avenue, subject to the conditions listed below:

1. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
2. All Development must conform to the conditions of this Development Permit and the Approved Plans, and any revisions thereto, as required pursuant to this Approval. Any further revisions to the Approved Plans must be approved by the Development Authority.
3. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting or any other property owned by the City which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of The City of Red Deer. In the event that The City undertakes the repairs the Applicant shall pay the costs incurred by The City within 30 days of being invoiced for such costs.

Subdivision & Development Appeal Board

4. Prior to the commencement of any construction, demolition or other work associated with this approval, the Applicant shall provide the following documents, plans or drawings (the "Additional Documents") to the Development Officer, which must be consistent with the Approved Plans. The Additional Documents are:
 - a) Revised landscape plan including enhanced landscaping in the parking lot islands, the 140m² grassy area by the building entrance, and the adjacent City-owned boulevard.

The Additional Documents shall, once provided to, and accepted by the Development Officer, be deemed to form part of the Approved Plans.

5. Prior to the commencement of any construction, demolition or other work associated with this approval, the Applicant shall enter into and comply with the provisions of a Development Agreement (DA) for the installation of landscaping on the City-owned boulevard. A separate set of plans is required for the Development Agreement.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the *Matters Related to Subdivision and Development Regulation*, Alta Reg 84/2022 (the SDR).
2. The Board is established by The City of Red Deer, Bylaw No. 3680/2022, The Red Deer Tribunals Bylaw (April 11, 2022). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.

BACKGROUND

5. On March 22, 2023, Municipal Planning Commission refused the Development Permit Application from the Appellant for the Discretionary Use of an Events Centre as an Accessory Use to a Hotel, with a variance to the minimum requirement of 577 parking stalls to a proposed 551 parking stalls, a 26 parking stall (4.5% reduction), a variance to the minimum front yard from 15 m to 6.44 m, and a variance to the on-site landscaping from 40% (6,264 m²) to 26% (1,274 m²), to be located at 3310 50 Avenue for the following reasons:
 1. The lack of reasonable access to sufficient parking onsite to accommodate the potential uses would unduly impact the use or enjoyment of neighbouring properties and create impacts to

traffic flow. Site use intensification may also create need for more parking regardless of overlapping uses outlined in the recommendation.

6. On March 31, 2023, the Appellant filed an appeal of this decision to the SDAB by way of a letter dated March 29, 2023.
7. The Board entered into evidence the documents found in Appendix A.

SUMMARY OF EVIDENCE AND ARGUMENT:***The Development Authority***

8. On November 16, 2022, Aggregate Design Studio Ltd. submitted a Development Permit Application for proposed Events Centre to the City of Red Deer Development Authority (the “Development Authority”). The lands are 3.43 hectares and are located at 3310 50th Avenue, Red Deer, Alberta with the legal descriptions:

Lot E
Plan 95009KS

Lot F1
Plan 3237NY

Lot 6
Block 1
Plan 932 2023

Lot 8
Block 10
Plan 942 1458

(collectively referred to as the “Lands”).

9. The use designation of the Lands is C4, Commercial (Major Arterial) District under *Land Use Bylaw 3357/2006* (the “LUB”). An Events Centre is a discretionary use of the lands under the Land Use Bylaw. Other previously approved uses on the Lands include a Hotel, a Casino, Liquor Store, Restaurant and VLT Lounge.
10. On March 22, 2023, Municipal Planning Commission (“MPC”) denied the Development Permit on the reasoning that “lack of reasonable access to sufficient onsite parking to accommodate the potential uses would unduly impact the use or enjoyment of neighbouring property and create impacts to traffic flow. Site use intensification may also create need for more parking regardless of overlapping uses outlined in the recommendation.”
11. On March 31, 2023, the Board received the Notice of Appeal from Aggregate Design Studio Ltd dated March 28, 2023. The Notice of Appeal was filed in time in accordance with section 686(1)(b) of the *Municipal Government Act, RSA 2000, c M-26* (the “MGA”).

12. The Appellant is seeking four variances:
 - i. reduce the minimum required number of parking stalls from 773 to 551;
 - ii. vary the minimum required number of parking stalls from 577 to 551;
 - iii. vary the minimum required front yard set back from 15m to 6.44m; and
 - iv. vary the onsite landscaping from 40% to 26%.

13. The Development Authority supports:
 - i. reducing the required number of parking stalls from 773 to 551 based on a report from the Appellant's engineer, which was reviewed by the City's Development and Transit engineer who supported the reduction;
 - ii. reducing the required stalls to 551 if the development is subject to the recommendations it has set out; and
 - iii. the variances for the front yard setback from 15m to 6.44m to accommodate the increased building capacity and onsite landscaping for parking onsite and vehicle access.

14. An analysis of traffic flow by the City's Development and Transit engineer suggested that the Lands are at 56% capacity for available parking stalls and that the overlapping uses of the proposed development would actually result in a reduction of total estimated cars. The Development Authority circulated notice of the development to the owners of the neighbouring properties and received no complaints or concerns about spill over traffic relating to the current parking conditions.

15. The Development Authority also advised that there were 20 municipal parking stalls available on 51 Avenue and that it is unlikely that other businesses would use these stalls. The City's Development and Transit engineer advised that 51 Avenue had a low traffic volume and that the recommended crossing areas were more than adequate for the function.

16. The proposed Event Centre is in line with the City's Gaetz Avenue vision project of 2013 and meets the intended uses of the Lands and area. The Development Authority does not support the parking agreement with Westerner Park due to difficulty with enforcement but acknowledged that businesses had a pressing interest in creating maximum parking availability for their customers.

17. The Development Authority also acknowledged that the Jackpot Casino, also owned by the O'Chiese Business and Investment Centre, was moving from its existing downtown location to the subject Lands. This may result in extra parking stalls becoming available at this vacated downtown location. However, the Development Authority also noted that the new site is more than 100m from the proposed Events Centre, making it further that the maximum distance allowed for shared parking. The Development Authority advised that permitting variances requires a compelling argument and evidence that it will not impact the amenities of the neighbourhood as a whole and confirmed that the City's Development and Transit engineer reviewed the Appellant's parking reports and found no issue with the proposal.

18. In response to Board questions, the Development Authority stated:
 - i. in regard to whether there was a provision or need to account for larger vehicles and if that would have an impact on the numbers regarding parking, the Development Authority

- confirmed that the Land Use Bylaw does not contemplate size of vehicles into parking requirements;
- ii. in regard to whether the variances allowed for vehicle access to the rear of the building, the Development Authority advised that the variances would not impede vehicle access and that loading and receiving was done at the front of the building;
 - iii. in regard to what parking is available and how walkable are the Lands in regards to nearby hotels, should the parking lot become full, the Development Authority advised they had looked at the Sandman and Holiday Inn, which are both 10-15 minutes walking distance away; and
 - iv. that the requirement for 773 stalls is based on the land use requirements for all of the uses on the Lands cumulatively, and that the 577 stall requirement is based on the land use bylaw section 3.1(6) which allowed the Development Authority to reduce the parking requirements based on complimentary or overlapping uses of parking facilities. The Development Authority confirmed to the Board that the application was for the Events Centre only and that the other uses on the Lands have had their permits issued, some for several decades, which accounted for the other figures in the parking calculations, as the Development Authority must look at the proposed use and how it will affect the Lands as a whole, and the other uses on the Lands at the time.

The Appellant

19. The Appellant submitted that the Events Centre meets the intended uses of the Lands and that the overlapping uses will result in a reduction in the need for onsite parking. The Appellant anticipates that the events will be of the same type as are already taking place at the old Events Centre, including events for the Red Deer Firefighters Association, Canadian Finals Rodeo, Q Sports International Billiards Club, the Western Canadian Dairy Seminar, and the Western Canadian Poultry Conference.
20. In relation to the nature and frequency of events, the Appellant confirmed that they anticipate 20 events per year ranging from 200 – 700 people, averaging about 400, and that the largest event is busy mainly from the hours of 9:00am – 4:30pm, which are not casino peak hours.
21. The setback variance and reduction in landscaping will have no impact on the amenities in the area.
22. The Appellant commissioned a parking study which suggested that the proposed parking on the Lands was adequate and that peak demand may be overstated even during overlapping events at the Events Centre and Casino. The parking study did not take into account the additional 20 parking stalls along 50 Avenue. There was no opposition to the development from any of the 108 adjacent landowners. MPC expressed support for the development overall, but was opposed only on the parking issue. In addition, the parking study was based on an assumption of an occupant load of 2,000; however, the existing Events Centre has never had more than 1,000 people in attendance, which should also reduce the need for parking.
23. The Appellant submitted that the parking issue is overstated and it has taken measures to mitigate the issue. The Casino and Events Centre would prioritize customer parking and that the mitigating

measures would be to accommodate employee and valet parking. The parking agreement with the Westerner was for 300 spaces for three years, and that this was not out of the ordinary for the Westerner to rent parking stalls. The Westerner parking stalls were for employees who would park and be shuttled to the Events Centre. The parking stalls from the Westerner would also be used to accommodate valet parking for patrons of the Events Centre. The Appellant estimated that 10% of Events Centre patrons would use the valet option. The Appellant advised that their arrangement with the Westerner would be for fenced off stalls that are not used by other businesses.

Affected Persons

24. Bernadine Coleman, a member of the Board of Directors of the O'Chiese Business and Investment Centre and owner of the Red Deer Resort and Casino spoke in favour of the appeal.
25. The O'Chiese Business and Investment Centre was established in 2009 to support local entrepreneurs and create new opportunities amongst the community, provide a higher standard of living, and a greater sense of self-reliance and self-sufficiency in the community. The O'Chiese Business and Investment Centre purchased the property in 2020 to diversify its businesses and investments. The goal of the development was to relocate the Casino and create an integrated resort atmosphere. The O'Chiese Business and Investment Centre is one of the largest and most stable employers in the city of Red Deer. The O'Chiese Business and Investment Centre has had a positive impact on all of the City of Red Deer, and they hope to continue with this development.
26. Ms. Coleman noted that the development has faced many challenges and unnecessary obstacles, including false allegations in the media and prejudices in the community. Ms. Coleman also acknowledged that replacing the existing businesses on the Lands laid off 63 full time and part time employees, but notes that the new Events Centre can possibly create more jobs than were lost.
27. No one spoke in opposition to the appeal.
28. The Board received one letter dated April 20, 2023 in favour of the appeal.
29. Both parties confirmed that they had the opportunity to present in a full and complete manner.

FINDINGS AND REASONS

Facts

30. The Development Permit application covers land municipally described as 3310 – 50 Avenue, 3320-50 Avenue, and 5218 -32 Street, Red Deer. The legal descriptions for these lands is:
 - i. Lot 6, BLOCK 1, Plan 932 2023;
 - ii. Lot 8, Block 10, Plan 942 1458;
 - iii. Lot E, Plan 5009 KS; and
 - iv. Lot F1, Plan 3237NY (the "Lands").
31. The Lands are zoned C4 (Commercial (Major Arterial) District under the City's Land Use Bylaw.
32. The proposed use is an Events Centre as an Accessory Use to a Hotel.

33. The proposed use is a discretionary use in the C4 District under the City's Land Use Bylaw.
34. The proposed use of an Events Centre as an Accessory Use to a Hotel is compatible with neighbouring uses.
35. The Land Use Bylaw requires 773 parking stalls for all developments on the Lands:

Use	Requirement	Total
Hotel	1 stall/guest room	=241 stalls
Gaming or Gambling Establishment (Casino)	1 stall/2.3 seats	=238 stalls
Restaurant	1 stall/4 seats	=34 stalls
Auditorium (Events Centre)	1 stall/10 seats	=200 stalls
Commercial Service Facility (Salon and Liquor Store)	2.5 stalls/93m ² or floor area	=15 stalls
VLT Lounge	1 stall/2.3 seats	=15 stalls
Restaurant (Garden Terrace Café)	1 stall/4 seats	=30 stalls
Total required stalls		=773 stalls
Total proposed stalls		=551 stalls
Total variance required		=222 stalls (29%)

36. Based upon the parking stall counts required by the Land Use Bylaw without accounting for any overlapping parking stalls, there is a deficiency of 222 stalls or 29%.
37. Using the authority under s.3.1(6) of the Land Use Bylaw, the required number of stalls is as set out in the table below.

Use	Requirement	Total
Hotel	1 stall/guest room	=241 stalls
Gaming or Gambling Establishment (Casino)	1 stall/2.3 seats	=183 stalls
Restaurant	1 stall/4 seats	=0 stalls
Auditorium (Events Centre)	1 stall/10 seats	=143 stalls
Commercial Service Facility (Salon and Liquor Store)	2.5 stalls/93m ² or floor area	=10 stalls
VLT Lounge	1 stall/2.3 seats	=0 stalls
Restaurant (Garden Terrace Café)	1 stall/4 seats	=30 stalls
Total required stalls		=773 stalls
Total required stalls according to Appellant's Engineer		=577 stalls
Total proposed stalls		=551 stalls
Total variance required		=26 stalls (4.5%)

REASONS

38. The Board's jurisdiction to hear this appeal is set out in s. 687(3) of the MGA.

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

(a) repealed 2020 c39 s10(52);

(a.1) must comply with any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

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

(i) the proposed development would not

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

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

and

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

Affected Persons

39. The Board must determine whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board; however, the Board wishes to review this issue for completeness.

40. The Appellant is the Applicant for the Development Permit and is therefore affected. The Appellant has the right of appeal under section 685(1).

Questions To Be Determined

41. In order to determine whether to confirm, revoke or vary the decision of MPC, the Board must determine the following questions:

- i. Does the proposed development comply with the applicable statutory plans?
- ii. What is the Use?

- iii. What is the nature of the use?
 - iv. Is the proposed development compatible with adjacent uses?
 - v. Does the proposed development comply with the development standards set out in the Land Use Bylaw?
 - vi. If the proposed development does not comply with the regulations of the Land Use Bylaw, should the Board exercise the variance power set out in section 687(3)(d) of the MGA?
42. In making this decision, the Board has examined the provisions of the MGA and has considered the oral and written submissions made by and on behalf of those who provided evidence: Development Authority and the Appellant.

Does the Proposed Development Comply with the Applicable Statutory Plans?

43. The first question the Board must address is whether the proposed development complies with the applicable statutory plans. The parties provided no submissions in relation to the statutory plans which would be applicable to the proposed development. In the absence of any submissions suggesting that the proposed development does not comply with the statutory plans, and in view of the fact that the proposed development consists primarily of the relocation of the Events Centre from one location on the Lands to a different location on the Lands, the Board finds that the proposed development complies with the statutory plans.

What is the Use?

44. The Development Permit application was for an Events Centre as an Accessory Use to the hotel. The Land Use Bylaw defines Accessory Use as:

Accessory Use means a use which is subordinate and incidental to that of the principal use.

45. In examining the question of whether the Events Centre is an Accessory Use to the hotel, the Board concludes as a fact that the Event Centre is an Accessory Use to the hotel for the following reasons. The primary use of the Lands is that of a hotel. This is reflected in the number of other uses on the Lands. It is also reflected in the size of the hotel as compared to the size of the other uses on the Lands. The relative size of the hotel is reflected in the number of parking stalls for the hotel (241). The Events Centre is smaller in size and requires far fewer parking stalls (200). As a result, the Board concludes as a matter of fact that the Events Centre is an Accessory Use to the hotel.

What is the Nature of the Use?

46. The evidence before the Board is that the Lands are zoned C4-Commercial (Major Arterial) District. The Board finds so as a fact.
47. In section 5.6.1(b)(ii) of the LUB, Accessory Use is listed as discretionary use. As a result, the Board finds that the Accessory Use of an Events Centre (accessory to a hotel) is a discretionary use within the C4 District.

Is the Proposed Development Compatible with the Adjacent Uses?

48. Since the Accessory Use is discretionary, the Board must assess the compatibility of the use applied for in comparison to adjacent uses as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261

[14] the object in purpose of a discretionary use is to allow the Development Authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

49. The Board did not hear submissions in relation to the compatibility of the proposed use in relation to the adjacent uses. However, the Board will address this point for the completeness of its reasons. The Board notes that the district is zoned C4, which is Major Arterial Commercial. In examining the compatibility of an Events Centre, the Board has considered that the Events Centre is located on Lands with multiple commercial uses, including a Hotel, a Casino, Liquor Store, Restaurant and VLT Lounge. The Board is of the view that the commercial nature of an Events Centre fits well with the other commercial uses on the Lands. These uses all relate generally to “entertainment” as does the Events Centre and the Board sees that aspect as contributing to their compatibility.
50. The Board has examined the Events Centre Use within the larger context of the area surrounding the Lands. The Board is aware that the area in question is commercial with various other commercial enterprises, such as the Sandman Hotel, etc. The Board is of the view that the commercial nature of the Events Centre is compatible with these other commercial uses in the area.
51. The Lands are located on two significant arterials within the City (32 Street and Gatez Avenue). Given the fact that an Event Centre will attract a number of people who will be travelling to that Events Centre by car, the location of the proposed development within a Major Arterial Commercial District is compatible and the Board finds so as a fact.

Does the proposed development comply with the development standards set out in the Land Use Bylaw?

52. Having determined that the use is compatible with the adjacent uses, the Board must then turn its attention to whether the Proposed Development complies with the regulations under the LUB. The Board heard evidence from both the Development Authority as well as the Appellant that the proposed development would require variances to:
- i. Vary the required number of parking stalls from 773 to 551;
 - ii. Vary the minimum required number of parking stalls from 577 to 551;
 - iii. Vary the minimum required Front Yard set back from 15m to 6.44m; and
 - iv. Vary the on-site landscaping from 6,264m² (40%) to 1,274m² (26%).
53. Both the Appellant and the Respondent provided submissions that confirmed that these were the deficiencies and the variances that have been requested from the Board. Both parties argued for the Board to exercise its discretion under s. 687(3)(d) to grant the requested variances.
54. In assessing the question of whether to grant the variances, the Board will address first the variance to the number of parking stalls, and then address the other two variances.

Amenities of the Neighbourhood

55. The analysis under s. 687(3)(d)(i) requires the Board to consider whether the proposed development would unduly interfere with the amenities of the neighbourhood. In order to answer this question, the Board must consider what the amenities of the neighbourhood are. It must make this determination before it can determine whether there has been any interference (undue or otherwise) with those amenities.
56. In determining what the amenities of the neighbourhood are, the Board notes that the area is a commercial one. There are a series of other commercial uses within the neighbourhood. The Lands are districted Major Arterial Commercial. The Board's conclusion is that the amenities of the neighbourhood are the mix of various commercial uses located within the area within a major arterial network.
57. The Board is of the view that this amenity (the opportunity for a mix of commercial uses in close proximity, with the ability to access via an arterial road network) is the same, regardless of which variance is being sought.
58. Having determined what the amenities of the neighbourhood are, the Board turns to its analysis of the variance test in s. 687(3)(d) of the MGA.

Variance of Parking Stalls from 773 to 551

59. The Development Authority provided evidence at Exhibit R1, paragraph 9 setting out the listing of approved uses on the property and the number of required on-site parking stalls which were calculated using the strict application of LUB requirements. The Development Authority's calculation evidences that the strict application of the LUB for all of the uses on-site would require the Appellant to provide 773 parking stalls on the Lands. Although the Proposed Development is only the Events Centre, the Development Authority advised that it was necessary to examine all of the uses on-site in order to take into account both the impact that the construction of the Events Centre on the Lands would have on parking and as well to have an overall assessment of the parking to be provided for all uses on the Lands.
60. The Land Use Bylaw requires 773 parking stalls for all developments on the Lands:

Use	Requirement	Total
Hotel	1 stall/guest room	=241 stalls
Gaming or Gambling Establishment (Casino)	1 stall/2.3 seats	=238 stalls
Restaurant	1 stall/4 seats	=34 stalls
Auditorium (Events Centre)	1 stall/10 seats	=200 stalls
Commercial Service Facility (Salon and Liquor Store)	2.5 stalls/93m ² or floor area	=15 stalls
VLT Lounge	1 stall/2.3 seats	=15 stalls
Restaurant (Garden Terrace Café)	1 stall/4 seats	=30 stalls
Total required stalls		=773 stalls
Total proposed stalls		=551 stalls
Total variance required		=222 stalls (29%)

61. Based upon the parking stall counts required by the Land Use Bylaw without accounting for any overlapping parking stalls, there is a deficiency of 222 stalls or 29%.
62. The Board accepts the uncontroverted evidence of the Development Authority that the use of the LUB would require a total of 773 parking stalls. The Board also accepts the uncontroverted evidence that the Appellant is able to provide 551 parking stalls on Lands. The resulting deficit of 222 parking stalls (29%) is the deficit required based upon the strict application of the parking requirements under the Land Use Bylaw. In considering whether to exercise its variance power to reduce the number of parking stalls to 551, the Board has conducted a two-part analysis:
- a. Would the reduction of parking stalls from 773 to 551 unduly interfere with the amenities of the neighbourhood?
 - b. Would the reduction of parking stalls from 773 to 551 materially interfere or affect use, enjoyment or value of the neighbouring parcels of land?
- a. Unduly Interfere with the Amenities of the Neighbourhood*
63. In considering whether the reduction in parking stalls from 773 to 551 would unduly interfere with the amenity of a mixed commercial district on major arterial roadways, the Board concludes that such a reduction of parking stalls as requested would not affect this amenity. The Proposed Development is an Events Centre which is a commercial use. Reducing the reduced number of parking stalls would not affect the commercial nature of any of the other uses within the neighbourhood. There was no evidence that the reduction in the number of parking stalls on the Lands would interfere with the uses on other parcels within the neighbourhood or the parking on these other lands. If there is no evidence of interference, then there can be no undue interference.
64. The Board also notes that the landowner reached an agreement for offsite parking at the Westerner for 300 vehicles. Even if there was some interference, the Board finds that the agreement for dedicated parking spots at the Westerner where employees can park and users of the Lands can have their cars valet parked would reduce any interference and mitigate it so that such interference would not be undue.
65. The Board also notes that the evidence was that there have been somewhere between 700 to 1,000 participants at the Event Centre, even though the parking study assumed 2,000 participants in order to calculate parking need. Since actual usage has been approximately half of the estimated amount, the reduction in parking stalls should not create a significant parking gap on the Lands. The Board is of the view that a reduction of the number of parking stalls would not have any undue interference with the amenity of a mixed commercial use.
- b. Material Interference with or Affect Use, Enjoyment and Value of Neighbouring Parcels*
66. There was no evidence before the Board that there would be any effect at all on any neighbouring parcel based upon a reduction in the number of parking stalls in the Lands. There was no evidence that the neighbouring parcels would suffer any interference or any effect in the use or enjoyment of the neighbouring commercial uses. There was no evidence that the neighbouring parcels would suffer any effect in their value due to the decrease of parking stalls on the Lands.

67. The purpose of the parking stalls is to provide parking for those attending at the Lands at their various uses. The Board was provided with no information or evidence that would support an argument that the Proposed Development would interfere, let alone materially interfere with use enjoyment or value of those neighbouring parcels.
68. Having considered both interference with amenities and interference with or affect on use, enjoyment and value, the Board concludes as a fact that the proposed development would not unduly interfere with the amenities of the neighbourhood and would not materially interfere with or affect the use, enjoyment or value of those neighbouring parcels. As a result, the Board is prepared to exercise its variance powers to decrease the required number of stalls from 773 to 551.

Overlapping Uses

69. The Development Authority advised that under s. 3.1(6) of the LUB, the Development Authority is entitled to consider overlapping uses which would warrant a reduction in the parking requirements. The Appellant hired an engineering firm (Bunt Engineering) which completed a parking study to evaluate the potential for overlapping uses. The parking requirements proposed by the Appellant's engineer due to the overlapping uses are as follows:

Use	Requirement	Total
Hotel	1 stall/guest room	=241 stalls
Gaming or Gambling Establishment (Casino)	1 stall/2.3 seats	=183 stalls
Restaurant	1 stall/4 seats	=0 stalls
Auditorium (Events Centre)	1 stall/10 seats	=143 stalls
Commercial Service Facility (Salon and Liquor Store)	2.5 stalls/93m ² or floor area	=10 stalls
VLT Lounge	1 stall/2.3 seats	=0 stalls
Restaurant (Garden Terrace Café)	1 stall/4 seats	=30 stalls
Total required stalls		=773 stalls
Total required stalls according to Appellant's Engineer		=577 stalls
Total proposed stalls		=551 stalls
Total variance required		=26 stalls (4.5%)

70. The Board notes that the analysis of overlapping decreases the number of parking stalls from 773 to 577. In light of the fact that the Appellant can provide 551 stalls, the deficit (or the variance required) is 26 stalls. This is 4.5% of variance.
71. The Board is aware that in determining the number of parking stalls, the Appellant did not consider the 20 on-street parking which would be available for patrons of the Lands. The parking stalls on the street, when considered in the context of the reduction of on-site parking, negates any concerns in relation to the reduction in parking stalls.
72. The Board's analysis found above in relation to the variance from 773 to 551 parking stalls in paragraphs 63 to above applies to this determination related to the variance from 577 to 551 parking stalls.

73. There was no evidence presented by anyone suggesting that the use of the neighbouring commercial parcels would be affected by the decrease of the parking stalls. The Appellant's arrangement for alternate parking also negates this concern. The Board is further persuaded by the evidence of the City's engineer, who has not noted any concerns in relation to the requested variance.
74. The Board has determined that reduction in parking stalls from 577 to 551 would not cause an undue interference with the amenities of a mixed commercial use area. The reduction in the number of parking stalls would not materially interfere with or affect use, enjoyment or value of neighbouring parcels.

Variance of Minimum Front Yard Setbacks

75. The Appellant requested a variance of the minimum setback from 15 metres to 6.44 metres. In examining the test for variance, the Board notes that the location of the Events Centre on the Lands has resulted in the need to reduce the Front Yard setback. The set back at 6.44m would allow vehicle access to the rear of the building and is supported by the City's administration due to the irregularity of the lot, being bisected by 51 Avenue, and the adjacent boulevard width.
76. The Board has considered the purpose of the setback providing for safety features and permitting aesthetic qualities of the development.
77. There is no evidence that the amenities of the neighbourhood previously identified would be affected by a reduction in the Front Yard setback. The commercial area would retain its nature even with this setback. Since there is no interference with the amenities, there is no reason not to exercise the variance power.
78. The Board notes that the City's engineer has reviewed the materials and the requested setback variance and has not indicated any concerns. The Board notes that the absence of concerns from the City's engineer suggests that the requested variance would not impact negatively the safety of pedestrian or vehicular traffic. In relation to the aesthetic components, the Board is satisfied that appropriate design on the façade of the building facing Gaetz Avenue would address any impacts to use, enjoyment or value of the neighbouring parcels.
79. Based on the absence of any concerns identified or expressed to the Board about any impact arising from the variance, and the support of the City, the Board concludes as a matter of fact that the variance of the Front Yard would not create any undue interference with the amenities of the neighbourhood nor would it materially interfere with or affect use, enjoyment or value of the neighbouring parcels of land.

Varying Onsite Landscaping

80. The Board has considered the request to vary onsite landscaping from 40% to 26%. The evidence of the parties is that the request to reduce onsite landscaping was necessitated to keep the number of parking stalls as high as possible. The Appellant proposed enhanced landscaping in the boulevard to compensate for the landscaping deficiency.

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81. The Board agrees with the submissions of the Development Authority that the intent behind landscaping requirements is to provide visual buffers, breaking up large parking areas and providing a natural element.
82. The Board is of the opinion that the Appellant's willingness to landscape the City's boulevard addresses the natural element component and would provide a visual buffer.
83. In relation to the amenities of the neighbourhood, the Board finds that the mixed commercial use (the amenity) is not interfered with arising from the reduction of onsite landscaping. The commercial use mix remains the same, regardless of how much landscaping is provided. The Board finds that any impacts to the neighbouring uses would be ameliorated by the landscaping of the boulevard.
84. The Board notes that the onsite landscaping is predominately for aesthetic purposes. The Board finds that the placement of landscaping on the City's boulevard would address any impact of use, enjoyment or value of the neighbouring parcels. Although the reduction in the amount of landscaping on the Lands may have an effect on the enjoyment of neighbouring parcels, the Board concludes as a matter of fact that there is no material effect on the enjoyment of neighbouring parcels. There was no evidence that the use or the value of the neighbouring parcels would be affected at all by the reduction in amount of landscaping.
85. Therefore, the Board is prepared to exercise its variance powers and grant the requested variance of onsite landscaping from 40% to 26%.

Should the Board Impose Conditions?

86. The Board notes that Appendix E to Exhibit R1 sets out five conditions in relation to the property.
87. All parties had the materials before them before the hearing. The Board heard no comments from the Appellant arguing that these conditions should not be imposed. Given the nature of the conditions, the Board finds that they are reasonable because they address ongoing concerns in relation to the work that is being done on the site. The Board agrees with the request from the Development Authority to impose these conditions.

CLOSING:

88. For these reasons, the decision of the MPC is revoked and the application for the Proposed Development is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 8th day of May, 2023 and signed by the Presiding Officer on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



For: Don Wielinga, Chair
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

APPENDIX A

Exhibit A.1:	Hearing Materials	64 pages
Exhibit A.2:	Public Comments	2 pages
Exhibit R.1	Development Authority Report	45 pages