

Appeal No.: SDAB 0262 007 2019
Hearing Commenced: November 26, 2019

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: R. Boerger
PANEL MEMBER: M. Kartusch
PANEL MEMBER: T. Lacoste
PANEL MEMBER: G. Paradis

BETWEEN:

RED DEER DREAM CENTRE LTD.
Represented by Wes Giesbrecht, Seth Schalk, Rob Warrender, Mike Mulholland
Appellant
and

CITY OF RED DEER
Represented by Beth McLachlan, Development Officer
Erin Stuart, Inspections & Licensing Manager
Development Officer

DECISION:

The Red Deer Subdivision and Development Appeal Board varies the decision of the Municipal Planning Commission (MPC) for a Development Permit Application for a Temporary Care Facility (drug and alcohol treatment facility), with 16 units, Offices and Institutional Service Facility (place of assembly) to be located at 4614 50 Avenue, Red Deer Alberta. The lands are legally described as Lot 26, Block 7, Plan 182 0745. The Development Permit is approved.

Approval is subject to the following conditions:

- A. 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.

- B. 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.
- C. 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.
- D. 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. A Crime Prevention Through Environmental Design (CPTED) Assessment. The Applicant shall comply with the recommendations of the report.
 - b. A Transportation Impact Assessment (TIA). The Applicant shall comply with the recommendations of the report.
 - c. The Applicant shall submit a revised south elevation which shows on the rooftop patio a vertical metal panel, or similar type of design, for the purpose to allow for privacy of use of the patio and for aesthetics on the public interface to enhance architectural design from Gaetz Avenue.
 - d. The Applicant shall submit a revised west elevation which shows decorative lighting, and other visual breaks in the façade every 7.5 to 10 metres on the second and third story, which provides architectural enhancements.

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

- E. The Applicant shall conduct a camera inspection of the existing sanitary service to verify its condition. If the condition of the sanitary service is not considered acceptable, the existing service is to be replaced at the applicant's expense through the City's service application process.

- F. Outdoor storage is prohibited on the Site.

- G. This Development Permit does not approve the Development of the following element (the "Non-Approved Elements"); any other uses listed under the definition of Institutional Service Facility or Temporary Care Facility other than described in this approval. Before the Applicant can proceed with the Development of the Non-Approved Elements the Applicant must apply for and obtain a separate Development Permit.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c. M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA.

2. The Board is established by The City of Red Deer, By-law No. 3619/2019, the *Appeal Boards Bylaw* (April 1, 2019). 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, By-law No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).

3. There were no conflicts identified by the Board Members. None of the Parties had any objection to the constitution of the Board.

4. There were no preliminary issues for the Board to decide.

BACKGROUND:

5. On October 16, 2019 the Municipal Planning Commission (MPC) refused the Development Permit Application for a Temporary Care Facility (drug and alcohol treatment facility), with 16 units, Offices, and Institutional Service Facility (place of assembly) to be located at 4614 50 Avenue, Red Deer Alberta. The lands legally described as Lot 26, Block 7, Plan 182 0745 (the "Proposed Site"). The Proposed Site is zoned C1 Commercial (City Center) District under the "LUB".

6. Reasons for the refusal were:
 - i. The Development is not compatible with existing Development in the area and would result in the concentration of similar uses in the historic Downtown, contrary to the intent and guidelines of the Municipal Development Plan (MDP) with respect to the principle of ensuring balance and diversity in the historic Downtown.

- ii. The Development is contrary to the intent of the Municipal Development Plan particularly sections 3.2, 7.2, 11(e), 11.1, 11.2, 11.3, 11.8, 11.9, and 12.6.
 - iii. The lack of reasonable access to sufficient parking to accommodate the potential daytime uses of the proposed place of assembly would unduly impact the use or enjoyment of neighbouring properties.
 - iv. The form and design of the proposed application is deficient in relation to the proposed uses being requested, given the lack of onsite food services and adequate recreation spaces in the facility which may negatively impact surrounding existing uses.
7. The Appellant filed an appeal of this decision to the Board on November 4, 2019.
 8. The Board entered into evidence the following:
 - Exhibit A.1: Hearing Materials (20 pages)
 - Exhibit A.2: Public Comments (99 pages)
 - Exhibit A.3: Additional Public Comments (5 pages)
 - Exhibit C.1: Appellant Submission (91 Pages)
 - Exhibit C.2: Appellant Letters of Support (64 pages)
 - Exhibit C.3: Appellant Additional Information - Outing Request Form (3 pages)
 - Exhibit R.1: Respondent (Development Authority) Report (256 pages)

SUMMARY OF EVIDENCE AND ARGUMENT:

9. The Development Officer confirmed for the Board that on June 15, 2019 Administration mailed out 29 notification letters to all landowners within a 100 m radius of the Proposed Site. Of those letters only one response was received.
10. Subsequent to that, over 200 letters were received by Administration from interested parties prior to the MPC meeting held October 2, 2019. The Development Officer confirmed that the MPC heard from speakers both in support and in opposition of the proposed development. However, the majority of concerns were related to social issues, safety and crime.

Land Use Bylaw – Use

11. The Development Officer stated that all applications before the Board must comply with the use prescribed for the property. In this case, the property is zoned C1. The uses for the proposed development are as follows:

Use	Permitted or Discretionary
Institutional Service Facility	Discretionary
Office	Permitted
Temporary Care Facility	Discretionary

12. The Development Officer stated that Office use is proposed as an accessory use to the Institutional Service Facility and Temporary Care Facility and therefore, the application is considered a discretionary use.
13. The Development Officer provided the definitions for proposed uses as shown in section 1.3 the LUB:

“Institutional Service Facility means a facility:

- a. providing cultural, educational or community services to the public such as libraries, museums, archives, auditoriums, concert halls, colleges, schools, places of worship or assembly;*
- b. a Secured Facility; and*
- c. providing government services or services provided on behalf of government services including hospitals, fire stations, police stations, court houses and detention and correction centres.”*

“Office means a development that provides professional, management, administrative, consulting, and health care services, such as the offices of doctors, lawyers, accountants, engineers, architects, clerical, secretarial, employment, telephone answering and similar office support services.”

“Temporary Care Facility means a facility providing temporary living accommodation and includes such facilities as overnight shelters, halfway houses, short term medical rehabilitation centres, detoxification centres, hospices and other similar uses.”

14. The Development Officer advised that ‘Social Agency’ is not a defined term under the LUB, nor is ‘Place of Assembly’.

15. The Development Officer stated the area includes a range of diverse uses including parking lots, other C1 commercial businesses such as offices, merchandise sales, drinking establishments, and commercial service facilities.
16. The Development Officer reviewed the guiding principles of The City of Red Deer, By-law No. 3404/2008, *Municipal Development Plan* (May 5, 2008) (the MDP) for the Board stating the intent is to ensure a balanced, diverse and accessible range of social, educational, health, recreation and cultural opportunities.
17. The MPC determined that the proposed development is not compatible with existing Development in the area and would result in the concentration of similar uses in the historic Downtown, contrary to the intent and guidelines of the Municipal Development Plan (MDP) with respect to the principal of ensuring balance and diversity in the historic Downtown.
18. The speaker for people opposed to the proposed development agreed with the MPC, stating that the intent of the MDP is to create a balanced, diverse and accessible downtown with social, education, health, recreation and cultural opportunities.
19. It is the position of those opposed that the Downtown is already saturated with Services that cater for a range of social needs. The addition of the proposed development would create a perception of the over-concentration of similar uses in the Downtown. He argued that approval of the proposed development would limit diversity and potentially bring more individuals with substance abuse issues to the downtown area.
20. The Appellant drew a distinction between the current services offered downtown and the proposed development, stating that this is not a Supervised Consumption Site, Overdose Prevention Site or Needle Exchange Program.
21. The Appellant explained that the proposed development will be a secure facility providing a faith-based 49-day Residential Recovery Program center for individuals struggling with drug and alcohol additions. The Appellant stated that the proposed development will not be a gathering place for addicted individuals who can come and go as they please.
22. The proposed development includes an Institutional Service Facility (place of assembly). The Appellant explained the intention to use the ground floor of the proposed development for conferences, weddings, gatherings, etc.

23. The Board agrees with the Development Officer with regard to the term 'Social Agency' within the LUB. Since 'Social Agency' is not defined, the Board accepts that it is considered Offices, Institutional Service Facility or Temporary Care Facility as defined in the LUB. Both Parties' submissions indicated there is no other service provided in Red Deer similar to the proposed development.
24. Both Parties identified that the proposed multi-use facility has a residential component thereby offering another type of residence to the downtown area. The Board is persuaded by the argument that the revitalization of an existing building that is currently vacant, and changing its use, will create more daytime activity in an area of Downtown that currently consists of evening use by patrons of Drinking Establishments.
25. The Board accepts the primary uses of Institutional Service Facility and Temporary Care Facility are not common in the downtown and finds that the proposed development would supplement the adjacent uses rather than resulting in a concentration of similar uses. The uses of the proposed development are appropriate on the site.
26. However, in the event the Board is incorrect in this finding, it evaluated the application as it relates to the regulations of the LUB.

C1 Regulations

27. The Development Officer stated the proposed development (an existing building) is compliant with the LUB with respect to setbacks, height, landscaping, density and parking.
28. The Development Officer further stated the proposed development is subject to the Development design criteria for the C1 District to ensure compliance with certain design and architectural elements.
29. The Development Officer confirmed that the position of the Development Officer has not changed. Its report to the MPC stated the proposed development is compliant with the LUB and that the discretionary uses proposed are appropriate for the site.
30. The Development Officer, the Appellant and the speaking public did not dispute that the proposed development complies with the LUB regulations. The Board accepts that it does.

Parking / Onsite Food Services- Within C1

31. The Development Officer clarified that all commercial businesses in the C1 District are exempt from the requirement to provide on-site parking. The Development Officer stated while there is no requirement to provide parking, it is of the opinion that sufficient parking is available for the proposed development.
32. The Development Officer explained they use a 500 m radius to determine an acceptable walking distance to access parking and transit.
33. The Development Officer advised that the provision of onsite food services and recreation spaces for the uses within the proposed development is not regulated by the LUB.
34. Notwithstanding the opinion of the Development Officer, the MPC determined the lack of reasonable access to sufficient parking to accommodate the potential daytime uses of the proposed place of assembly would unduly impact the use or enjoyment of neighbouring properties.
35. The MPC also determined the form and design of the proposed development is deficient in relation to the proposed uses being requested, given the lack of onsite food services and adequate recreation spaces in the facility which may negatively impact surrounding existing uses.
36. The Appellant submitted revised drawings to the Board to address the concerns raised by the MPC. These revisions include:
 - i. Full Service Kitchen, with eating area
 - ii. Recreational use gymnasium-type area
 - iii. Recreation area will double as the place of assembly with portable seating
 - iv. Additional rooms identified as multi-use, games rooms, or weight rooms
37. The Appellant referred to the revised drawings discussed above, which now include nine (9) dedicated parking stalls for staff. The occupancy limit for the place of assembly has also been reduced from 600 people to 200 people.
38. The speaking public did not address parking, nor did they speak to the lack of onsite food service or recreation.

39. The Board reviewed a parking map submitted as evidence (Exhibit R1 p. 24) which outlined the surrounding area parking options. The Board was able to confirm 341 parking stalls are available within the suggested 500 m block radius and that there are additional parking options outside this area.
40. The Board finds that the proposed development complies with the parking requirements of the LUB. However, the Board gave further consideration to the concerns from MPC related to the potential negative impact related to daytime activities and parking.
41. The decision of the MPC indicates that the proposed development should be able to provide parking that is not required of any other business in the C1 zoning. In order to levy additional regulations that would exceed the LUB, the Board would need to be convinced that the proposed development merits the supplementary conditions to be imposed.
42. On street parking exists and there are several parking lots close by. The Board was not presented with compelling evidence that would convince them to impose a higher standard on this development.
43. Further, the Board finds the proposed occupancy reduction to the place of assembly in conjunction with the number of available parking options within a reasonable distance to be sufficient for the proposed development.

Alternative Locations / Detrimental Impact

44. The Development Officer stated that the only other districts that would allow the proposed development to operate as one multi-use facility are the Public Service (PS) Institutional District or Government District. While the proposed uses are allowed in other districts, there was more than one that could accommodate certain uses but they require the uses to be offered in separate buildings.
45. The Development Officer stated the site is located along an arterial roadway with direct access for vehicle traffic.
46. The Development Officer stated pedestrian access connections exist around the site and connect with 50 Avenue, 51 Avenue and 47 Street. The Development Officer further stated that this allows for pedestrian access to all services offered Downtown, including transit, shopping and park amenities.

47. In its decision, the MPC stated the proposed development was not appropriate for the area and would unduly interfere with the use or enjoyment of the neighbourhood.
48. The majority of speaking public in favor of the proposed development brought forward personal perspectives and experiences. Many believe there is a need for the proposed development and that it would be a positive addition to the downtown area.
49. One person spoke on behalf of those opposed to the proposed development. He argued there is no question there is a need for a facility of this nature, the only issue is the location.
50. The speaker for people opposed argued that the proposed development is not appropriate with the existing development. The close proximity of Drinking Establishments, Strip Clubs, and so on would most likely not be considered compatible with this type of facility. He also stated that the Dream Centre in Calgary is located away from the downtown core.
51. The Appellant argued that the Proposed Site is the best possible location for the proposed development. He stated the other districts would not have the proximity to the majority of services that are offered in the downtown area. The Proposed Site is across from an RCMP Detachment, adjacent to a Fire Station and a short distance to the Red Deer Hospital. The Appellant explained that the proposed development would be involved with many of the social agencies, of which the majority operates in close proximity to the proposed Site.
52. The Appellant argued that the proposed development meets the vision of the MDP while fostering a strong sense of community in the historic Downtown. The Appellant stated that adding this type of facility to the city centre allows for a wider range of human, social and cultural services.
53. The Appellant argued that businesses are leaving and continue to leave the downtown core. The Dream Centre has a proven business plan, with 84 Dream Centre locations worldwide. The Appellant believes that the proposed development will provide a positive solution to an existing downtown issue, while revitalizing the downtown, attracting new business and promoting the Downtown area.
54. In its review of the evidence regarding the onsite food services and recreation area, the Board believes the addition of the onsite kitchen with eating area, as well as the

recreational gymnasium multi-use area have resolved the concerns identified in the decision of the MPC.

55. The Board was cognizant to the issue of having the services offered in one building, narrowing the options to districts zoned C1 or PS.
56. The Board considered the potential if the proposed development were to be re-located to a residential neighbourhood. The Board believes there is more potential to create negative impact in relation to parking, where this was not a requirement for businesses in the C1 District.
57. The Board accepts the Appellant's argument that the best location for the proposed development is in the C1 District.
58. The Board considered the compatibility of the adjacent businesses with the proposed development. From the evidence provided, the Board noted that one of the businesses agrees with the Appellant that the proposed development would be beneficial for the downtown. However, the remainder of those businesses in attendance were opposed.
59. The Board considers the proposed development to be a compatible use, when an application complies with the LUB there is no legislative requirement to consider whether the use would unduly interfere with the use or enjoyment of the neighbourhood. In any event, and given the polarized opinions on the location of the proposed development, the Board did consider similar aspects to those identified in the MPC decision in coming to the conclusion that the proposed development is a compatible use in the proposed location.
60. The Board then reviewed the letters of support as well as the letters opposed to the proposed development.
61. The Board determined that some of the businesses that were once in opposition to the proposed development have since added their names to the list in support. These businesses include Canadian Pizza, Evergreen Massage, Chubby Jerk BBQ Kitchen, Classic Tattoo, Copies Now and Baker Family Chiropractic & Wellness Centre.
62. The Board placed the appropriate weight to the letters submitted both in support and opposed, as well as the verbal comments for the proposed development. The Board is persuaded that the proposed development supports the ongoing re-development and revitalization of the Downtown area.

63. The Board agrees that the addition of this type of facility to this mixed use area has the potential to encourage investment, attract new businesses and enhance an area of the historic Downtown that is currently underutilized.
64. Therefore, the Board finds the proposed development is in line with the intentions of the MDP.

CLOSING:

65. For the reasons detailed above, the permit is approved with conditions as stated earlier.

This decision can be appealed to the Court of Appeal on a 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.

Dated at the City of Red Deer, in the Province of Alberta this 11th day of December, 2019 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



On Behalf of:
K. Howley, Chair
Subdivision & Development Appeal Board

APPENDIX A

EXHIBIT LIST

- Exhibit A.1: Hearing Materials (20 pages)
- Exhibit A.2: Public Comments (99 pages)
- Exhibit A.3: Additional Public Comments (5 pages)
- Exhibit C.1: Appellant Submission (91 Pages)
- Exhibit C.2: Appellant Letters of Support (75 pages)
- Exhibit C.3: Appellant Additional Information - Outing Request Form (4 pages)
- Exhibit R.1: Respondent (Development Authority) Report (256 pages)

APPENDIX B

Public Comments

Arguments the Board heard from the individuals in favor of the proposed development

- There is an identified need for this type of facility. At this time there is no viable solution to the drug crisis in the City and lack of resources to respond.
- Individuals with drug and alcohol addictions need to leave Red Deer in order to recover. This involves long wait times, which in itself is a deterrent to many individuals suffering from these addictions.
- This is an opportunity to do something positive for the community, to get people off the streets and rehabilitated. This would result in decreased crime, vandalism and allow individuals suffering the opportunity to become successful in life.
- This is an opportunity to revitalize an area of Downtown that is currently underutilized. The addition of the Dream Centre would change that perception.
- One of the Business owners spoke to the current services offered Downtown, the initiatives like the Needle Exchange Program and the Supervised Consumption Site. Stating these services support the issues with addictions and do nothing to resolve them. The proposed development is offering a solution, a secure facility for individuals to recover.

Individuals that Spoke in Favor

Pearl Franz	Austin McGrath	Gayah Phagoo
Earl Pauley	Albert Letourneau	Donavan Fowler
Brent Quirico	Anita Schaffmer	Shane Walper
Cameron Brown	Connie Malena	Leanne Tyerman
Kelly Row	Terry Trueman	Elaine Skiba
Linda Murrell	Marylise Pelletier	Kat Hoffman
General Kazondunge	Abdul Mohammad Oasman	Robert Hasket
Clarence Torgerson	Don Hebert	Nadine Nowlan
Jesse Hein	Alvin Rainville	Johnathon Schneider
Bob Wing	Raymond Paquette	Pat Moore
Bill Franz	Fortant Kalonji	Michael Kemyi

APPENDIX C

Public Comments

Arguments the Board heard from the individuals in opposition of the proposed development

- The MPC decision was the right decision and should be upheld.
- There is an identified need for a facility of this nature; the only issue from those opposed is the requested location.
- The proposed development is not appropriate or compatible with the existing development.
- The adjacent uses include Drinking Establishments, Strip Clubs, and so on. These Uses are not likely considered compatible with the proposed development.
- Dream Centre's in other areas are located away from the Downtown core, The Calgary Dream Centre is located away from the downtown core.
- The Downtown is currently saturated with Social Services.
- The proposed development would create a concentration of similar uses.
- Limiting diversity
- Potential to bring more individuals with substance abuse issues to the Downtown area.
- Negative impact the surrounding neighbourhood.
- This is contrary to the intent of the MDP.

Chris Rickards spoke on behalf of those opposed (listed below):

Sierra's Of Taylor (Condominium Building)	Kildy Li
Downtown Business Association	Lorna Watkinson-Zimmer
Comforts the Sole	Vicki Swainson
Great Strides Fine Shoes	