

ROCKY VIEW COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Board Order No.: 2019-SDAB-047

File No.: 06411034/06411035; PRDP20190898

Appeal by: Seaview Investments Ltd. (Len McKeary)

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 October 9

Decision Date: 2019 October 24

Board Members: D. Kochan, Chair
D. Henn
I. Galbraith
H. George
W. Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued August 23, 2019. In this decision the Development Authority conditionally approved a development permit for a School, Private, Public Building, and Offices (existing building), tenancy and signage (associated with PRDP20174052) at Units 7, 8 and 9 – 261051 Wagon Wheel View (the Lands).

[2] Upon notice being given, this appeal was heard on October 9, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued subject to the following conditions:

Description:

- (1) That a change of use from General Industry, Type II to School, Private, Public Building, and Offices (associated with PRDP20174052) may occur within the existing building, associated with tenancy and signage for Bays 7, 8, and 9, in general accordance with the details submitted with the application and conditions of this permit.
 - (a) Installation of one (1) fascia sign. Drawing details shall be submitted to the County.

Prior to Issuance:

- (2) That prior to issuance of this Permit, the Applicant/Owner shall provide a letter prepared by a qualified transportation engineer to address if the analysis and traffic volumes in the Balzac Global Traffic Impact Assessment Report (December 2010, as amended) for these lands meet the criteria for the development. The letter will also need to address if the proposed development is in accordance with the Wagon Wheel Industrial Park Traffic Impact Assessment that created this lot. If not, an updated Traffic Impact Assessment will be required for the site to address the potential for off-site impacts.
 - (a) If the recommendations of the Traffic Impact Assessment require off-site improvements, then a Development Agreement shall be entered into.
- (3) That prior to issuance of this permit, the Applicant/Owner shall submit a Demand Analysis that confirms and demonstrates calculations for water and wastewater usage for the proposed use in the building. It shall describe and summarize all proposed water uses within the facility for County records (i.e. occupant load, washrooms, commercial/industrial uses if any, etc.).
 - (a) Should the site require additional servicing capacity to accommodate the new use, then the Owner shall provide payment for additional capacity in accordance with the Master Rates Bylaw C-7857-2019, as amended.
- (4) That prior to issuance of this permit, the Applicant/Owner shall submit to Rocky View County an Emergency Response and Evacuation Plan for the facility.

Prior to Occupancy:

- (5) That prior to occupancy of Bays 7, 8, and 9, the parking area associated with PRDP20192564 shall be completed.

Permanent:

- (6) That all conditions of PRDP20151026 and PRDP20192564 shall remain in effect.
- (7) That at minimum, 130 parking stalls shall be maintained off-street and on-site at all times to serve the development, in accordance with the approved Site Plan under PRDP20192564.
- (8) That no storage at any time shall be allowed in the front of the property.
- (9) That the development shall be operated in accordance with the on-site Storm Water Management Plan approved for this site, in perpetuity.
- (10) That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Authority.
- (11) That all garbage and waste for the site shall be stored in weatherproof and animal proof containers and screened from view by all adjacent properties and public thoroughfares.
- (12) That the Applicant/Owner shall be responsible for all required payments of third party reviews and/or inspections as per the Master Rates Bylaw.

Advisory:

- (13) That a Building Permit shall be obtained through Building Services prior to tenant occupancy and/or any renovations taking places.
- (14) That any future change in use of the building (or tenants) shall require a Development Permit.
- (15) That any approved signage shall be kept in a safe, clean and tidy condition at all times.
- (16) That the Applicant/Owner shall submit their Emergency Response and Evacuation Plan for the facility to the appropriate provincial and federal bodies.
- (17) That any other federal, provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- (18) That there shall be no parking at any time on adjacent Rocky View County road right-of ways.
- (19) That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
- (20) That if this Development Permit is not issued by **FEBRUARY 29, 2020**, then this approval is null and void and the Development Permit shall not be issued.

BACKGROUND

[4] On March 26, 2019, Salim Merchant (the Applicant) submitted a development permit application for the change of use of an existing building from General Industry, Type II to School Private, Public Building, and offices that will include a performing arts space including space for instruction, rehearsal and the performance of dance, drama and music.

[5] The Lands are located at SW-11-26-29-W4M, located approximately 1.61 kilometres (1 mile) south of Highway 566 and on the east side of Range Road 292. The Lands are approximately 0.02 hectares (0.06 acres) in area and are owned by PKSR Holdings Ltd.

[6] The Lands' are designated DC-99, falling within Cell 2. The Lands' are regulated by both the *Direct Control Bylaw C-6301-2005* [the *Direct Control Bylaw*] and Parts One, Two, and Three of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On August 23, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That a change of use from General Industry, Type II to School, Private, Public Building, and Offices (associated with PRDP20174052) may occur within the existing building, associated with tenancy and signage for Bays 7, 8, and 9, in general accordance with the details submitted with the application and conditions of this permit.
 - (a) Installation of one (1) fascia sign. Drawing details shall be submitted to the County.

Prior to Issuance:

- (2) That prior to issuance of this Permit, the Applicant/Owner shall provide a letter prepared by a qualified transportation engineer to address if the analysis and traffic volumes in the Balzac Global Traffic Impact Assessment Report (December 2010, as amended) for these lands meet the criteria for the development. The letter will also need to address if the proposed development is in accordance with the Wagon Wheel Industrial Park Traffic Impact Assessment that created this lot. If not, an updated Traffic Impact Assessment will be required for the site to address the potential for off-site impacts.
 - (a) If the recommendations of the Traffic Impact Assessment require off-site improvements, then a Development Agreement shall be entered into.

- (3) That prior to issuance of this permit, the Applicant/Owner shall submit a Demand Analysis that confirms and demonstrates calculations for water and waste water usage for the proposed use in the building. It shall describe and summarize all proposed water uses within the facility for County records (i.e. occupant load, washrooms, commercial/industrial uses if any, etc.).
 - (a) Should the site require additional servicing capacity to accommodate the new use, then the Owner shall provide payment for additional capacity in accordance with the Master Rates Bylaw C-7857-2019, as amended.

Prior to Occupancy:

- (4) That prior to occupancy of Bays 7, 8, and 9, the parking area associated with PRDP20192564 shall be completed.

Permanent:

- (5) That all conditions of PRDP20151026 and PRDP20192564 shall remain in effect.
- (6) That at minimum, 130 parking stalls shall be maintained off-street and on-site at all times to serve the development, in accordance with the approved Site Plan under PRDP20192564.
- (7) That no storage at any time shall be allowed in the front of the property.
- (8) That the development shall be operated in accordance with the on-site Stormwater Management Plan approved for this site, in perpetuity.
- (9) That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Authority.
- (10) That all garbage and waste for the site shall be stored in weatherproof and animal proof containers and screened from view by all adjacent properties and public thoroughfares.
- (11) That the Applicant/Owner shall be responsible for all required payments of third party reviews and/or inspections as per the Master Rates Bylaw.

Advisory:

- (12) That a Building Permit shall be obtained through Building Services prior to tenant occupancy and/or any renovations taking places.
- (13) That any future change in use of the building (or tenants) shall require a Development Permit.
- (14) That any approved signage shall be kept in a safe, clean and tidy condition at all times.
- (15) That any other federal, provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.

- (16) That there shall be no parking at any time on adjacent Rocky View County road right-of ways.
- (17) That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
- (18) That if this Development Permit is not issued by **FEBRUARY 29, 2020**, then this approval is null and void and the Development Permit shall not be issued.

[8] On September 9, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 14 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[9] The Board heard verbal submissions from:

- (1) Lisa Mrozek, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Supervisory Engineer, for the Development Authority;
- (4) David McKinnon, on behalf of the Appellant;
- (5) Jennifer Sykes, Caron & Partners, on behalf of the Applicant;
- (6) Carlos Foggin, General Manager, Polaris Centre for the Performing Arts;
- (7) Salim Merchant, the Applicant;
- (8) Hong Ngan, in opposition of the appeal.

[10] The Board received no letters in support of the appeal.

[11] The Board received eight letters in opposition of the appeal:

- (1) Roger Brassard
- (2) Ken Dobransla
- (3) Thomas Stroke
- (4) Ruben Varsteez
- (5) Todd Maurer

- (6) Chelsea Restall
- (7) Angela Pitt
- (8) Jennifer Harbour

Development Authority's Submissions

[12] There is an existing development for a private school. This proposal is expanding the original use that is in Bays 8 and 9 and expanding into Bay 7.

[13] This will accommodate an auditorium space at the rear of the building as well as a lobby space in the northeast corner of Bay 7.

[14] The change of use required increased parking spaces. That proposal is contained in a different development permit application.

[15] As this application falls within a Direct Control District, the Board should only consider if the Development Authority followed council's intention within the direct control bylaw for this appeal I.

[16] The original private school development permit was approved in 2017.

[17] All uses under the DC-99 bylaw require a development permit and are neither discretionary nor permitted.

[18] The definition of a school in the County Land Use Bylaw is very broad.

[19] Condition 4 in the subject permit is reliant on the development permit for the increased parking that has been applied for.

[20] Condition 6 notes that 130 stalls are required for the additional expansion of the school.

[21] Schools have been included within the original Direct Control Bylaw that was created in 2005.

[22] There is nothing listed in the Land Use Bylaw with regards to dangerous / hazardous goods routes.

[23] There are modifications needed to the building in order to comply with the building codes, the applicant is aware of these modifications.

[24] The Transportation Impact Assessment required by the conditions will take into account all of the traffic in the area.

Appellant's Submissions

[25] There are dangerous goods that are being hauled by the school such as anhydrous ammonia.

[26] Being that there are dangerous goods both stored and being transported near the school, have there been emergency response plans created to evacuate in the event of a spill or emergency.

[27] The Wal-Mart campus has two large concentrated liquid hydrogen tanks a few hundred metres away from the school.

[28] At any time, there are approximately 100 semi-trailer trucks in the area.

[29] The building the school is in is deemed to be in a safe location; however, the building codes for the building are different.

[30] Industrial areas are put on the outskirts of cities in case there is a hazardous or dangerous event that occurs, this proximity limits the exposure to the public.

[31] In the Transportation Impact Assessment, there are no hazards listed, no hazardous goods or emergency routes listed.

[32] If this is approved it is a grave mistake in the event there is a catastrophic event that happens in the area.

[33] There will be buses on the road with over 100 trucks coming in and out of the two concrete plants that are in the vicinity.

[34] There is a new asphalt plant in the area as well.

[35] This development may affect any future development within the Highfield Park.

[36] The plans show the auditorium has a bar, why is there a bar in an industrial area where there is a zero tolerance policy on drugs and alcohol.

[37] It is just a matter of time before something happens be it someone being hit by a truck, a major traffic accident or a catastrophic event.

[38] Land designations are looked at when any properties are purchased.

Jennifer Sykes Submissions

[39] This is an expansion of an existing school; the school was approved in 2017 and continues to operate today.

[40] The conditions of the development permit required a traffic engineer to submit a letter that this development is consistent with the information in the original Traffic Impact Assessment that was completed for the 2017 development permit.

[41] Requesting that condition 4 be removed and condition 6 be amended, to allow parking on a temporary basis within the condominium complex after hours and on weekends.

[42] The Applicant will accept a condition requiring an Emergency Response Plan to be created.

Carlos Foggin Submissions

[43] This space is a collaborative space that has dance, arts, music and drama programs. These programs will be mostly after hours and allow the different genres to work together.

[44] There are resident companies that use the space as well.

[45] There is a dedicated dance space that both public and private schools can be utilized for the students.

[46] This shared space provides a collaborative space for the arts.

[47] This is not a traditional school; the space will primarily be used after hours and after school for the programs. Small tailored instruction will be done evening and weekends. There will occasionally be performances on the weekend as well.

[48] There will be approximately 3-4 band camps per year, which would amount to 3-4 bus trips per year.

[49] There are no concerns that have come from the parents about the traffic in the area or that this area is in an industrial area.

Salim Merchant Submissions

[50] In 2017 there was a development permit issued for the school, this is a permitted use under the DC-99 bylaw. This development permit is for the expansion of the school to include a performing arts centre.

[51] Bays 8 and 9 will remain the same but will be connected by a corridor on the second floor.

[52] The bar will only be open during performances.

Hong Ngan Submissions

[53] There is another business in the area called the Yashruti Centre; this centre provides meeting, seminar, training, convention and exhibition space to the public. The Polaris Centre will provide a space like this for cultural events and performances.

[54] The centre will act as a valuable cultural space for the neighbourhood and surrounding communities.

Appellant's Rebuttal

[55] You cannot think that accidents do not occur because they do.

[56] There will be bigger financial gains in moving the school.

[57] The building requires two entrances for egress.

Development Authority's Closing Comments

[58] Hazardous goods being transported in the vicinity of the development is federally regulated, Rocky View County only looks at site specific issues.

[59] The application was not circulated to the Federal Government as it is on the landowner to circulate to those parties.

[60] The Wal-Mart distribution centre had development permits issued in 2008 for the shell building and 2010 for the hydrogen system. There were conditions for the development permits that required a site specific Emergency Management Plan and Chemical Management Plan to be submitted.

Appellant's Closing Comments

[61] None.

FINDINGS & REASONS FOR DECISION

[62] The School, Private, Public Building, and Offices (existing building), tenancy and signage is a permitted use in the DC-99 District, in accordance with both the *Direct Control Bylaw* and Parts One, Two, and Three of the *Land Use Bylaw*.

[63] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[64] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound-planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[65] The Board acknowledges that the school has been in existence on the lands since 2017 and has grown their business to the point of requiring an expansion to their facilities. The Board acknowledges that there is another community facility in the building adjacent to the north of the school.

[66] The board recognizes that potential issues may occur due to surrounding business' utilizing hazardous chemicals in their operations, therefore a prior to issuance condition in the permit has been added to provide the appropriate response plans and approvals through the Federal Government permitting process.

[67] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[68] For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on October 24, 2019.



Don Kochan, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

NO.	ITEM
1.	Development Authority's Report to the Board (28 pages)
2.	Development Authority's Presentation to the Board (6 pages)
3.	Handout from Appellant (2 pages)
4.	Applicant Presentation to the Board (25 pages)
5.	Hong Ngan Position Document (1 page)