

**DECISION OF THE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB)
OF THE TOWN OF OKOTOKS
DATED SEPTEMBER 12, 2024**

DECISION

Hearing held at: Town of Okotoks Municipal Centre
Council Chamber and videoconference
5 Elizabeth Street, Okotoks

Date of Hearing: August 29, 2024

Members present: Shane Hansma, Chair
Erin Felker
Carissa Carleton
Kyla Mumby

Staff present: Matt Lalonde, Development Officer
Patty Huber, SDAB Clerk

Board Solicitor: Bryan Marback, Kennedy Agrios Oshry Law (attended virtually)

Summary of Appeal: Against the decision of the Town of Okotoks Development Authority to refuse development permit application DP2024-0160 for a change of use to 209 Stockton Avenue / Lot 28, Block 1, Plan 801 0201 from Office to Education to operate a childcare facility with outdoor play area.

Appeal filed by: Happy Place Holdings Ltd. (as represented by Chandra Kulaga, Piotr Kulaga, and Latosia Campbell-Walters)

PRELIMINARY MATTERS

1. The Board asked whether there were any objections to the members of the Board. There were no objections.
2. The Board asked whether there were any objections to the proposed hearing procedure. There were no objections.
3. There were no adjournment requests.

EVIDENCE

4. The Board heard verbal submissions from the following:
 - Matt Lalonde, Development Officer (“DA”);
 - Latosia Campbell-Walters on behalf of Happy Place Holdings Ltd. (“Appellant”);
 - Chandra Kulaga, Appellant and Property Owner; and
 - Piotr Kulaga, Appellant and Property Owner.

5. The Board received written submissions from the following:
 - Matt Lalonde, DA;
 - Chandra Kulaga, Property Owner and Appellant;
 - Piotr Kulaga, Property Owner and Appellant; and
 - 495775 AB Ltd., Affected Person.

6. The Board reviewed the materials contained in the agenda package and an additional written submission received at the hearing (which is on the Board’s file).

SUMMARY OF SUBMISSIONS

Submissions of the DA

7. The DA summarized their written submissions, which are on the Board’s file, together with the relevant bylaws, policies, plans, and legislation.

8. The proposed use, Education (“Daycare”), is misaligned with the General Description and Intent of the Industrial Business Park (“IBP”) district.

9. The intent of the IBP district is to provide for light and medium industrial activities and/or outdoor storage. The proposed use is discretionary and does not meet this intent.

10. The proposed use is deemed to be incompatible with adjacent uses, a lumberyard and bottle depot, and could potentially have a negative impact on the use, enjoyment, or value of neighbouring properties and could limit their ability to safely operate.

11. The outdoor children’s play area would impede access to the building’s garbage enclosure. Other potential locations for the outdoor play area would also be inappropriate.

12. The existence of other Daycares in the IBP district was not considered. Each application must be reviewed on its own merits according to relevant planning matters and sound planning principles.
13. Some uses are discretionary because they will not be supportable in all situations.
14. Even though the previous use, Office, used classrooms, operating a Daycare still requires a change of use. The DA must consider the previous approved use when considering a development permit application.
15. The existing fences do not mitigate the compatibility issues with the adjacent parcels and these concerns could not be mitigated through enhanced fencing and sound barriers.
16. There is the potential for safety hazards caused by equipment or materials in the lumberyard to the North impacting the fence.
17. In the DA's opinion, a Daycare is not compatible with an immediately adjacent and operating lumberyard.

Board Questions for the Development Authority

18. The Board asked the DA if the adjacent parcels were zoned IBP as well. The DA replied that the adjacent parcels were zoned IBP.
19. The Board asked the DA about the difference between permitted and discretionary uses from the DA's perspective. The DA replied that it affects the DA's ability to respond to an application, as they must approve an application for a complying permitted use.
20. The Board asked the DA how the Daycare will impact the adjacent uses, and how the adjacent uses will impact the Daycare. The DA replied that there are fencing regulations that may have not been complied with. The DA did not specify how the proposed change of use was not in compliance with the Land Use Bylaw ("LUB").
21. The Board asked the DA if there was a setback to the bottle depot to the East. The DA replied that there is no setback and the bottle depot is built flush to the property line.
22. The Board asked the DA what the difference was between Industrial-Light and Industrial-Medium uses. The DA replied that Industrial-Medium uses can create off-site noise,

pollution, and other impacts, depending on the adjacent uses. Industrial-Light does not create such off-site impacts.

23. The Board asked the DA whether the proposed change of use would have off-site impacts. The DA replied that it was unlikely that there would be off-site impacts other than noise.

Submissions of the Appellants

Chandra Kulaga, Appellant

24. Ms. Kulaga provided a written statement for the Board's consideration. Ms. Kulaga described the background of the business and the desire to grow to provide more childcare to meet the growing demand in Okotoks. Ms. Kulaga firmly believes that the proposed change of use will be to the greater benefit of the Town.

25. The subject lands were purchased as they are entirely suitable for the proposed use of Education. There is a growing need for Daycares in Okotoks, including in the IBP district.

Piotr Kulaga, Appellant

26. There is an inadequate supply of Daycares necessary to meet growing demand in Okotoks and the Daycare will create and support jobs and stimulate the local economy, benefitting the community at large.

27. Providing accessible childcare within the IBP district supports working families and aligns with Okotoks' broader community planning goals. It will enhance the IBP district's appeal and will offer amenities and support to local businesses and employees.

28. The current use of the building, Office, was used as office space with classrooms. The proposed use is a logical evolution of the existing use. Office use would also not be in alignment with the IBP district, as submitted by the DA. The lot and building do not trend towards industrial use.

29. The Town's Municipal Development Plan ("MDP") is focused on flexibility in land uses, and mentions the word "flexible" 21 times, stressing the need for mixed uses, districts, and neighbourhoods.

30. The LUB explicitly permits a variety of non-industrial uses in the IBP district, which speaks to the district accommodating uses, and stresses minimal off-site impacts and appropriate buffering.
31. The new LUB was approved in 2021 and the new districts were designed to focus on flexibility and mixed uses.
32. Education is a permitted use in only three (3) districts and is discretionary in five (5). This is evidence that the vision of the MDP and LUB are aimed at mixed uses and demonstrates the importance of childcare for everyone, everywhere.
33. There are limited options for development in Okotoks that are not discretionary.
34. IBP suggests a diverse mix of uses that can support the broader community.
35. There are Daycares in the IBP district alongside similar adjacent uses. The fact that they may have been granted under a previous bylaw strengthens the Appellants' case as the new LUB is even more focused on and promotes increased flexibility.
36. Part 5 of the LUB states that the DA will work collaboratively with the Applicants. The DA never reached out or followed up with the Appellants prior to refusing the application.
37. The off-site impacts of the Daycare would be minimal, likely only noise.
38. The Appellants requested that the Board overturn the DA's decision.

Latosia Campbell-Walters, for the Appellants

39. The proposed use is not misaligned with the IBP, it is a discretionary use and the IBP is a district that provides flexibility in planning decisions. A Daycare will address community need and will have minimal impact on the neighbouring uses.
40. Education uses are in alignment with broader policy goals as stated in the MDP and LUB, such as sustainability, flexible mixed-use environments, promoting a business friendly environment with a diverse and prosperous economy, and fostering a health, happy, connected community.

41. There is a contradiction in the stated intent of the IBP district. Industrial-Medium is described in the General Description and Intent of the IBP district, but is itself a discretionary use.

42. The proposed use is not misaligned with the IBP and is consistent with the MDP and LUB.

Questions for the Appellants

43. The Board asked the Appellant if there were specifications required for the license that that Appellant will need to obtain to operate the Daycare. The Appellant replied that Alberta Childcare gives the permit and there are some specific requirements regarding the area per child. The Appellant opined that Alberta Childcare should be the entity to dictate the safety of the outdoor play area.

44. The Board asked the Appellant if they could have submitted the development permit application without the outdoor play area. The Appellant replied that they could have, as they believe they could apply for an exemption under their license to use off-site public open space areas instead of an on-site play area.

45. The Board asked the Appellant if they would be willing to operate the Daycare without the outdoor play area. The Appellant replied that they could, as a last resort; however, the proposed outdoor play area is enclosed onsite. This is safer than other Daycares with outdoor play areas adjacent to busy roads or parking lots.

46. The Board asked the Appellant if they require their license before or after the development permit application. The Appellant replied that the development permit application is the first step.

47. The Board asked the Appellant if there is a minimum play area that will be required to obtain their license. The Appellant replied that they believe there is an area requirement of 4.5m² per child, but that is a licensing issue, not a planning consideration.

Parties in Opposition

48. The Board received a letter from 495775 AB Ltd. on August 27, 2024 in opposition to the Appeal. They opined that an industrial park is not appropriate for a Daycare as it may impact industrial businesses' ability to operate safely.
49. There are noises and odours present in the industrial park that could be harmful to the children.
50. They do not want to hinder anyone's business, but established long-time business should not be put at risk for any reason.

Materials Received Following the Hearing

51. Ms. Campbell-Walters submitted a letter to the Board titled "Submission: Interpretation of Planning Merits for Proposed Change of Use from Office to Daycare in IBP District at 209 Stockton Ave." Ms. Campbell-Walters spoke to this document during the hearing.
52. As this document was not before the Board or other Parties at the hearing, the Board places little weight on this letter. The Board notes that the letter summarizes and expands on the points that Ms. Campbell-Walters spoke to in the hearing.

DECISION

53. The Board allows the appeal and revokes the decision of the Development Authority to refuse the development permit application. The application for a development permit for Education to operate a childcare facility with outdoor play area is approved with the condition that the development fully comply with the LUB and that the Appellant provide revised plans to the satisfaction of the Development Authority showing that the development fully complies with the LUB.

REASONS

54. The Board is of the view that the proposed discretionary use is appropriate at this location for the following reasons:

- a. The MDP and LUB speak to increased flexibility in land use in the Town of Okotoks. The LUB that was approved in 2021 reduced the number of districts, and now focuses on flexibility and mixed uses.
- b. The Board acknowledges the General Description of the IBP district but notes that Education is expressly listed as a discretionary use in the IBP district. The Board further notes that Industrial-Medium, which is referenced in the General Description, is also a discretionary use.
- c. There are no significant changes between the previous use, Office with classrooms, and the proposed use.
- d. There are other Daycares in the IBP district. While the Board is not bound by precedent, the Board should strive for consistency, where appropriate, to promote fairness for similar uses in similar circumstances. The existence of other Daycares in the IBP district supports that the Education use is not inherently misaligned with the IBP district.
- e. The operations of the Daycare will be generally limited to on-site activities and the only likely off-site impacts of the Daycare would be noise. Given the nature of the adjacent uses, the Board finds that the Daycare will not have off-site impacts that materially affect the use and enjoyment of the neighbouring parcels.
- f. In response to the letter of opposition, each neighbouring development is required to operate pursuant to Town Bylaws and its respective development permit. Provided that the neighbouring developments are fully in compliance, the Daycare will not restrict or limit the operations of neighbouring developments.
- g. The Board notes the DA's concerns with respect to safety, but acknowledges the Appellants' submissions that Daycares routinely operate adjacent to busy roads or in parking lots with outdoor play areas. In the Board's view, an on-site and enclosed play area does not present a higher risk than a play area next to a busy road or parking lot. The Board is satisfied that the outdoor play area will not raise safety concerns.

SUMMARY

55. The proposed Education use is a discretionary use in the IBP district. The General Description does not have override the fact that Education is an allowable use in the IBP district.

56. The Board finds that the proposed use is appropriate on the subject site. The Daycare is compatible with the neighbourhood and should not negatively impact the operations of neighbouring developments.

57. The Board allows the appeal and revokes the decision of the Development Authority. The application for the Daycare is approved with conditions as set out above.

Dated this 12th day of September 2024.

---Original Signed---

Shane Hansma
Subdivision and Development Appeal Board Chair

IMPORTANT INFORMATION

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*, RSA 2000, c. M-26.