

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: C. Mah
PANEL MEMBER: K. Howley
PANEL MEMBER: R. Boerger

BETWEEN:

1960735 ALBERTA LTD.
o/a Subway

Appellant

and

INSPECTIONS & LICENSING
for The City of Red Deer
Represented by Beth McLachlan, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board (“the Board”) confirms the decision of the Development Officer which refused the Appellant’s application for a Change of Use, for Warehousing and Industrial Support Services (offices) to an existing industrial building located at 2, 6720-71 Street, Red Deer, Alberta, on lands zoned I1 Industrial (Business Service) District and legally described as UNIT 2, CDE, Plan 022 0028 (“the Site”).

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, RSA 2000, c. M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the Subdivision and Development Regulation, Alta Reg 43/2002 (the SDR).
2. The Board is established by The City of Red Deer, By-law No. 3619/2019, *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, 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. An Application for a Development Permit for a change of use is reviewed under the use table of the applicable District, the definitions and any applicable regulations. The Development Authority must determine if the proposed business use is allowable at the proposed Site.
6. The I1 Industrial District allows a multitude of uses as either Permitted or Discretionary. Uses are defined under Section 1.3 of the Land Use Bylaw (LUB), which provides the Development Authority direction in relation to Development Permit applications for a change of use.
7. On July 7, 2021, the Development Officer refused the Development Permit Application from the Appellant for a Change of Use, for Warehousing and Industrial Support Services to the Site, in an I1 Industrial District. The reasons given for the refusal were for the following:
 - i. The proposed Development of Office use for Subway operations is not an allowable use within the I1 Industrial (Business Service) District. The proposed Subway offices do not meet the definition of Industrial Support Services.
 - ii. The primary use for Subway at this location is for Offices and not warehousing and storage, therefore, the offices are not considered accessory to a principal industrial use.
8. The Appellant filled an appeal of this decision to the SDAB on July 20, 2021.
9. The Board entered the exhibits listed in Appendix "A" into the record.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

10. The Development Authority stated that the proposed Development Permit application must be evaluated based on the listed uses and definitions within the LUB. The Development Officer must determine if the proposed use is allowable at the proposed Site.
11. The Development Authority stated that the application form and letter of intent provided by the Appellant was reviewed by the Development Officer in determining the business use by Subway. An inspection of the proposed Site on June 23, 2021, was also conducted to determine the use of the Site. The application form, letter of intent and the on-site inspection, all supported the primary use by Subway of the Site, was for office purposes.
12. The Development Authority explained that the permitted uses in the I1 Industrial District are listed under Section 6.1(1)(a)(vi) and (x) of the LUB for Warehousing and Industrial Support Services. The primary use of the Site as an office by Subway is not allowable use within the I1 Industrial District.
13. The Development Authority also explained that the primary use of the Site by Subway as an Office is not considered accessory to a principal industrial purpose. The principal use must be to provide industrial support. Although the warehouse is shared with GAM Tech, the other business operating at the Site, no items for Subway were observed to be stored in the warehouse.

14. GAM Tech is an IT service company that uses the Site as offices, warehousing, and storage. GAM Tech is an allowable use within the definition of the Industrial Support Services under Section 6.1(1)(a)(vi) and (x) of the LUB for Warehousing and Industrial Support Services.

The Appellant

15. The Appellant stated that the layout of the existing building did not change. The Appellant stated the only change would be that two businesses would be operating in the space with each business using an equal amount of space.
16. The Appellant explained that Subway has not yet completely set up on Site and will be using the Site for the purposes of office, training, and distribution.

FINDINGS AND REASONS

17. All applications before the Board must comply with the use prescribed for the property as identified within in the LUB as per Section 687(3)(a.3) of the MGA. *“In determining an appeal, the board hearing the appeal referred to in subsection (1) ... (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect; ...”*

18. The Board considered Section 6.1 of the LUB which can be found in Exhibit B.1. This Section describes the general purpose of an I1 Industrial (Business Service) District as follows:

“The general purpose of this District is to provide for a limited range of light industrial, warehousing, storage, and industrial support services within the performance standards of section 6.6 subsection (2)(a), the operation of which do not create or emit noises, odours, dust, fumes or other factors which are regarded as nuisances. In addition, this district will provide for certain other businesses which are incompatible in commercial districts” (6.1).

19. The Site is zoned I1 Industrial (Business Service) District.

20. The Board also considered Section 1.3 of the LUB which can be found in Exhibit B.1. This Section provided definitions of an “Office” (non-conforming) and “Industrial Support Service” (conforming):

“Office means a development that provides professional, governmental, managerial, administrative, business support and/or consulting services, with minimal retail activity incidental to the principal use.”

“Industrial Support Service means a Development whose principal use is to provide support services to industrial clients. Typical uses include, but are not limited to, duplicating, photocopying and blueprinting services, building security, cleaning or maintenance services, engineering (with dangerous goods), industrial drafting, land surveyors, laboratories, oilfield services, project design and management services, construction trade, information technology support services, financial and insurance service outlets and construction contractors, and exclude Offices. Any retail sales, display or Office areas shall be accessory to the principal Industrial Support Service use. Does not include Cannabis Retail Sales.”

21. The Development Authority is prohibited from issuing a Development Permit approval for a change of use if the proposed business use does not fall within the Definition of Uses under Section 1.3 of the LUB, for lands zoned in I1 Industrial District.
22. The Development Authority is also prohibited from issuing a Development Permit approval for a change of use if the proposed business use does not function as an accessory to the principal industrial use, as per Section 1.3 of the LUB.
23. In this case the Board must decide if the proposed business use by Subway, complies with a prescribed use in the I1 Industrial District and if that use conforms with the LUB.
24. The Board confirmed the layout of the existing Site has not changed and remained the same. The change made was two businesses occupy the Site presently instead of one business.
25. The Board agreed with the Development Authority that the layout of the Site does not determine the actual business use of the Site but the actual function of the Site used by the business determines the actual use of the Site. The actual use of the Site will determine if the proposed business use falls within any of the definitions outlined in Section 1.3 of the LUB.
26. The Board reviewed the pictorial evidence within the Respondent report from the on-site visit of June 23, 2021. The Board determined that the observations made by the Development Authority accurately represented the actual use of the Site by Subway. The Board agrees with the Development Authority's findings that the primary and actual use by Subway is for office purposes for managerial and administrative purposes, and not as a distribution center. The business use by Subway as an Office at the proposed Site is not a permitted or discretionary use in the I1 Industrial District.
27. The Board also considered if the offices used by Subway could be an accessory use to a primary business use. The primary business use must be to provide industrial support for this Site, because the Site is in the I1 Industrial District. The Board found the actual use by Subway was not an accessory use as defined in Section 1.3 of the LUB. An example of accessory use allowed is GAM Tech, the other business on the Site. GAM Tech's primary business is IT services. Therefore, the use of the Site by GAM Tech as offices with warehousing, is an allowable accessory use because IT services is a primary business use listed within the definition of Industrial Support Services.
28. The Board reviewed the intended future use by Subway as a distribution center which may indicate that the actual business use may change but presently the actual business use by Subway is as an office.
29. The Board is satisfied that the Development Permit application for a change of use does not conform to a listed used for the Site under the LUB.

CLOSING:

30. For these reasons, the decision of the Development Authority is confirmed and the application is denied.

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.

Dated at the City of Red Deer, in the Province of Alberta, this 9th day of August, 2021 and signed by the Chair 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: Carol Mah, Chair
Subdivision & Development Appeal Board

APPENDIX A

Exhibit A.1:	Hearing Materials	11 pages
Exhibit B.1:	Development Authority Report	51 pages