



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 11, 2019
Project Numbers: 257883235-010
257884965-010
File Number: SDAB-D-19-078 / 079

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on May 30, 2019, made and passed the following motion:

“That the appeal hearing be postponed to June 26 or 27, 2019.”

- [2] On June 26, 2019, the Board made and passed the following motion:

“That SDAB-D-19-078 and SDAB-D-19-079 be raised from the table.”

- [3] On June 26, 2019, the Subdivision and Development Appeal Board (the “Board”) heard two appeals that were filed on **May 3, 2019**. The appeals concerned the decision of the Development Authority, issued on April 15, 2019, to refuse the following developments:

257883235-010 (SDAB-D-19-078) (hereinafter referred to as “078”)

To leave as built a Single Detached House (increase building height)
located at 10620 – 69 Street NW (Plan 1720067 Blk 46 Lot 48)

257884965-010 (SDAB-D-10-079) (hereinafter referred to as “079”)

To leave as built a Single Detached House (increase building height)
located at 10622 – 69 Street NW (1720067 Blk 46 Lot 47)

- [4] The subject properties are within the Rf1 Single Detached Residential Zone and the Mature Neighbourhood Overlay applies to these developments.

- [5] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit applications with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- Photographs from the Appellant; and

- Three online responses in opposition to 078, and two online responses and one e-mail in opposition to 079.

Preliminary Matters

- [6] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, S. Mudliar

- [9] Mr. Mudliar was not aware of the Height error until the project was midway through construction. The roof trusses were already in place and the project was at the drywall stage. The Appellant has previously built 25 to 30 houses and this is the first time he has run into this situation.
- [10] The best option for minimizing the Height issue is to increase the grade by adding some extensive retaining walls at considerable expense, but the development would still be six inches over the allowed Height.
- [11] The Appellant was unable to gain support from neighbouring owners because the neighbourhood is opposed to lot splitting and infills in general.
- [12] Between the Height issue and the difficulty selling the projects due to market conditions, he has been under considerable stress.
- [13] Mr. Mudliar reviewed eight photographs taken one month ago to provide context to the developments and the neighbourhood:
- a) Public feedback referred to sunlight being blocked; however, the photographs show many mature coniferous trees on the subject sites that have more of an impact on sunlight penetration than the proposed developments.
 - b) There are many mature trees along the entire street.
 - c) The immediately adjacent neighbour has a “no lot splitting” sign on the front lawn.
- [14] The Appellant provided the following responses to questions from the Board:

- a) He confirmed that he was not made aware of the Height issue until midway through construction. The excavation crew did not go as deep as what was required on the plans because they encountered the sewer lines at a higher elevation than expected, however the Appellant was not informed of this decision. The Appellant only became aware of it when the Height issue came to light.
- b) The overheight section of the roofs are in the middle of the property and are only a small portion of the overall roofs.
- c) The second floor Heights were reduced from nine feet to eight feet at the initial planning stages in an effort to comply with Height requirements.
- d) The roof-top terraces will have minimal impact on neighbouring property owners because:
 - i. They overlook the rear yards and do not extend the full width of the rear elevations.
 - ii. There are many mature 30 to 40-foot tall spruce trees along the north side of the subject sites and two or three tall trees along the north property line.
 - iii. Privacy screening prevents overlook into neighbours' yards from anyone sitting on the terraces.
 - iv. The rear landscaping slopes toward the river and there is only one house to the rear of the proposed developments.
- e) The Appellant did not add the dotted line on the right elevation drawing and believes it was added by the Development Officer to show where the maximum permitted Height should be.
- f) The proposed developments have basements with nine-foot high ceilings.
- g) The garages were built on separate permits and comply with all regulations. They add additional privacy to the back yards.

ii) Position of the Development Officer, K. Bauer

[15] The Development Authority did not attend the hearing and the Board relied on Ms. Bauer's written submissions.

Decision

[16] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

Advisements:

1. Lot grades must match the Edmonton Drainage Bylaw 18093 and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
2. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
3. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)
4. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[17] In granting the development the following variances to the *Edmonton Zoning Bylaw 12800* are allowed:

SDAB-D-19-078

1. The maximum allowed Height (to the midpoint) of 8.9 metres pursuant to section 814.3(5) is increased by 0.3 metres to allow a maximum permitted Height (to the midpoint) of 9.2 metres.
2. The maximum allowed Height (to the peak) of 10.4 metres pursuant to section 52.2(c) is increased by 0.2 metres to allow a maximum permitted Height (to the peak) of 10.6 metres.

SDAB-D-19-079

1. The maximum allowed Height (to the midpoint) of 8.9 metres pursuant to section 814.3(5) is increased by 0.4 metres to allow a maximum permitted Height (to the midpoint) of 9.3 metres.
2. The maximum allowed Height (to the peak) of 10.4 metres pursuant to section 52.2(c) is increased by 0.4 metres to allow a maximum permitted Height (to the peak) of 10.8 metres.

Reasons for Decision

[18] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.

[19] Both houses were built too high:

- a) The property at 16020 – 69 Street NW exceeds the maximum allowable Height at the peak of the roof by 0.2 metres and at the midpoint by 0.3 metres
- b) The property at 16022 – 69 Street NW exceeds the maximum allowable Height at the peak of the roof by 0.4 metres and at the midpoint by 0.4 metres.

[20] The Board has determined that the appeal should be allowed for the following reasons:

- a) The design of these homes means that the overages in height are located toward the middle of the buildings, which mitigates the impact of the increased Height on neighbouring parcels of land.
- b) Based on the photographs provided, the Board is satisfied that the excess in Heights has a minimal impact from the street and will not detract from the streetscape. As well, mature vegetation in the area further mitigates any impacts caused by the Height overages.
- c) The rooftop terraces are located in the middle of the homes, which minimizes any overlook onto neighbouring parcels.
- d) The variances required are minimal and will not have a material impact on sun shadowing, nor will they significantly increase massing.

[21] Some of the neighbours expressed the view that the houses in question, which were built on a subdivided lot, were uncharacteristic of the neighbourhood and should not be allowed. However, the Board notes that such houses are Permitted Uses and that they comply in every respect with the *Edmonton Zoning Bylaw* except for the Height variances discussed above.

[22] The Board is of the opinion that these developments, with these variances, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. B. Gibson, Mr. J. Kindrake, Ms. E. Solez, Ms. S. McCartney,

c.c. City of Edmonton, Development & Zoning Services, Attn: Ms. K. Bauer/Mr. A. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. 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. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: July 11, 2019
Project Number: 302525621-001
File Number: SDAB-D-19-095

Notice of Decision

- [1] On June 26, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 3, 2019. The appeal concerned the decision of the Development Authority, issued on May 30, 2019, to refuse the following development:

Construct a Single Detached House with Unenclosed Front Porch, rear uncovered deck (5.94m x 3.05m), rear balcony, fireplace, and to develop a Secondary Suite in the Basement.

- [2] The subject property is on Plan 1920560 Blk 99 Lot 3, located at 10526 - 85 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Strathcona Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s petition, previous SDAB decisions and photos; and
- Online responses in support.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – SDAB-D-15-073
- Exhibit B – SDAB-D-16-250
- Exhibit C – SDAB-D-19-009 / 010

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, F. Sanchez

- [8] F. Sanchez, the property owner, was accompanied by D. Glowicki of Ashton Homes.
- [9] They submitted a map and photographs of other overheight buildings within a two-block radius, including walk-up apartment buildings and several sets of duplexes.
- [10] In response to a question from the Board, they explained that they determined that these buildings are overheight by looking at the floor heights. They also spoke to several people at some of the sites who confirmed that height variances had been granted.
- [11] A petition was submitted with numerous signatures in support of the proposed development, and the Development Officer also indicated that several neighbours had provided their support. There is much enthusiasm for this project to go ahead and residents wish to see the old homes redeveloped.
- [12] Six previous decisions of the SDAB were submitted to the Board to support the request for a Height variance. The Chair explained that each appeal is evaluated on its own merits as circumstances may be different in each situation and the Board is not bound by its previous decisions. Mr. Sanchez and Mr. Glowicki confirmed that they understood this.
- [13] Strathcona is a mixed use area. They have designed the proposed house not only to fit in with the area, but also specifically for this particular street. There is a walk-up apartment building immediately to the east of the proposed development and two sets of duplexes to the east of this apartment building.
- [14] No objections have been received and they feel that the proposed development fits into the streetscape and the area.
- [15] The Appellant provided the following responses to questions from the Board:
- a) While the Height regulations in the Mature Neighbourhood Overlay are guidelines that are helpful, in this case, the one-metre excess in Height does not appear to be an issue for surrounding neighbours. There have been many changes to designer housing and many contemporary homes have a flat roof or very low pitched roofs that skew the Height calculations. The proposed development has a very low pitched roof with a ratio of 1:12.

- b) One neighbour on the street provided his support for the proposed development on the condition that no Height variance will be requested when the property immediately abutting his property is developed. The abutting lot is also owned by Mr. Sanchez and he is prepared to accommodate this neighbour's request.
- c) The basement, main floor and second floor all have nine-foot high ceilings while the third floor has a ceiling that is eight feet high.
- d) Construction has not yet begun.
- e) They are aware that in older neighbourhoods, sewer connections may be shallower than in newer areas. They will not be making a new application to pull the building further out of the ground should this issue arise. Instead, they will install a pump if necessary.
- f) The rear yard of the apartment building to the east consists of a concrete parking lot.
- g) The duplexes to the east of the apartment building are a few feet taller than the apartment building. Their proposed development will be similar in height to these duplexes and will therefore be higher than the apartment building.
- h) They have reviewed the proposed conditions of the Development Officer and have no objections to them should this development be approved.

ii) Position of the Development Officer, R. Zhou

[16] The Development Authority did not attend the hearing and the Board relied on Mr. Zhou's written submission.

Decision

[17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.5).
3. Landscaping shall be installed and maintained in accordance with Section 55.
4. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 m above the finished ground level, excluding any artificial embankment, shall

- provide Privacy Screening to prevent visual intrusion into Abutting properties (Reference Section 814.3.9).
5. Single Detached Housing requires 1 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1(112) (Reference Schedule 1 of Section 54.2).
 6. Landscaping shall be installed and maintained in accordance with Section 55.
 7. Frosted or opaque glass treatment shall be used on windows to minimize overlook into adjacent properties (Reference Section 814.3.8).
 8. A hard surface Walkway is required between the Garage, Garage pad, or Parking Area and an entry to the Dwelling (Section 150.4.10).
 9. For the Secondary Suite, 1 on-site parking space in addition to the parking requirements for the Principal Dwelling shall be provided (Reference Section 54.2 Schedule 1).
 10. All required parking shall be clearly demarcated, have adequate storm water drainage and storage facilities, and be Hardsurfaced (Reference Section 54.6(1)(a)(i)).
 11. A Secondary Suite shall be developed in such a manner that the exterior of the principal Dwelling containing the Secondary Suite shall appear as a single Dwelling from a public roadway other than a Lane (Reference Section 86).
 12. Only one of a Secondary Suite or a Garden Suite may be developed in conjunction with a principal Dwelling (Reference Section 86).
 13. A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, Child Care Services or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business (Reference Section 86).
 14. A maximum of one Household shall occupy a Secondary Suite (Reference Section 86).
 15. Dwelling means a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household (Reference Section 6.1).
 16. Locked separation that restricts the nonconsensual movement of persons between each Dwelling unit shall be installed.
 17. Secondary Suites shall not be included in the calculation of densities in this Bylaw (Reference Section 86).

ADVISEMENTS

18. Any future deck development greater than 0.6m in height will require development and building permit approvals.
19. Any future deck enclosure or cover requires a separate development and building permit approval.
20. Any future basement development requires development and building permit approvals.
21. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
22. Lot grades must match the Edmonton Drainage Bylaw 18093 and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
23. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw 12800*.
24. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site (Reference Section 5.2).
25. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[18] In granting the development the following variance to the *Zoning Bylaw* is allowed:

1. The maximum allowed Height of 8.9 metres pursuant to section 814.3(5) is increased by 1.0 metre to allow a maximum permitted Height of 9.9 metres.

Reasons for Decision

- [19] Single Detached Housing is a Permitted Use in the RF4 Semi-Detached Residential Zone.
- [20] This appeal involves a request for a variance to Section 814.3(5) of *Edmonton Zoning Bylaw 12800*. The proposed development exceeds the maximum allowed Height by one metre. The Board has decided to allow the variance for the following reasons:

- a) The community consultation facilitated by the Development Officer revealed that there was no opposition to the proposed variance and that there were a number of neighbours in favour of granting the requested variance.
- b) The Appellant presented a petition with 12 signatures in support of the proposed development. The Board notes that some of the addresses are from outside the 60-metre notification area and one of the signatures is from a property that the Appellant owns.
- c) No one wrote in opposition to the proposed development and no one appeared at the hearing in opposition to the development.
- d) The Board accepts the evidence of the Appellant that there are a number of homes in the neighbourhood that are overheight. The proposed overheight home will not be uncharacteristic of the neighbourhood and will fit in with the streetscape.
- e) The lot immediately to the east of the proposed development is zoned RA7 Low Rise Apartment Zone and it has a walk-up apartment on it. The only outdoor space on that property is a parking lot so the excess in Height of the proposed development will have little to no effect on the amenities of that property.

[21] For all of the above reasons, the Board is of the opinion that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. B. Gibson, Mr. J. Kindrake, Ms. E. Solez, Ms. S. McCartney,

cc: Development & Zoning Services – R. Zhou/ A. Wen

Important Information for the Applicant/Appellant

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2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. 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. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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Fire & Flower Inc.
400, 5241 Calgary Trail NW
Edmonton AB T6H 5G8

Date: July 11, 2019
Project Number: 306082440-001
File Number: SDAB-D-19-080

Notice of Decision

[1] At a hearing on June 5, 2019, the Subdivision and Development Appeal Board (the “Board”) made and passed the following motion:

“That the appeal hearing be postponed to June 26.”

[2] On June 26, 2019, the Board made and passed the following motion:

“That SDAB-D-19-080 be raised from the table.”

[3] On June 26, 2019, the Board heard an appeal that was filed on May 8, 2019. The appeal concerned the decision of the Development Authority, issued on April 25, 2019, to refuse the following development:

Change the use from a Specialty Food Store (Starbucks) to a Cannabis Retail Sales and construct interior alterations

[4] The subject property is on Plan 9123322 Blk 1 Lot 56, located at 4333 - 50 Street NW, within the DC2 - Site Specific Development Control Provision. The Burnewood Neighbourhood Area Structure Plan applies to the subject property.

[5] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans and the refused Development Permit;
- The Development Officer’s written submissions;
- Supplemental Submission from City of Edmonton Law Branch; and
- The Appellant’s written submissions.

Preliminary Matters

[6] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellants, Fire and Flower

- [9] Mr. Wakefield appeared to represent the Appellant. He was accompanied by V. Gereluk of Fire and Flower. The subject site is zoned DC2 Site Specific Development Control Provision and was amended on December 10, 2018 to add Cannabis Retail Sales as a listed Use.
- [10] The Development Permit application was refused because the setback from public lands (Jackie Parker Recreational Area) is only 47 metres instead of the required 100 metres as required under Section 70.5 of the *Edmonton Zoning Bylaw*.
- [11] Ms. Gereluk grew up in the area and is familiar with the location of the park in relation to the subject site. A map under Tab 4 shows there is only one building on the subject site and no matter which bay the Cannabis Retail Sales occupies, it will always be 47 metres away from the Jackie Parker Recreational Area.
- [12] Tab 8 contains a map showing the boundaries of the Jackie Parker Recreational Area and the nearby dog park, and Tab 9 contains an overhead view of the area. Other maps provided under Tabs 12, 13 and 14 show that walking distances from the subject site to the park are significantly greater than 47 metres.
- [13] Mr. Wakefield referenced subsections DC2.1040.4(n) and (o), which read as follows:
- n. The Development Officer may grant relaxations to Section 50 to 79 of the Zoning Bylaw and the provisions of this District, if in his opinion such a variance would be in keeping with the general purpose of this District and would not affect the amenities, use and enjoyment of neighbouring properties.
 - o. The Development Officer may grant relaxations to the regulations contained in Sections 40 to 98 of the Zoning Bylaw and the provision of this zone if, in his opinion, such a variance would be in keeping with the General Purpose and would not adversely affect the amenities, use and enjoyment of the neighbouring properties.
- [14] These provisions give specific variance powers to the Development Officer to vary certain sections of the *Edmonton Zoning Bylaw*. Section 70 of the Bylaw is one of the sections that the Development Officer may vary. This section deals with the Cannabis

Retail Sales regulations, including the regulation that imposes the 100-metre separation distance from public lands.

- [15] The 47-foot separation distance between the proposed development and the park is essentially the road width. It is measured from the site boundary of the subject site to the site boundary of Jackie Parker Recreational Area. As per the maps provided at Tab 5, the actual distance from the door of the proposed development to the park area is between 178.55 meters and 300.04 metres depending on which portion of the park you measure to.
- [16] He has provided the City's standard "Cannabis Retail Sales Law and Legislation Brief" (Tab 6).
- [17] At Tab 7 is "Supplemental Submission of the City of Edmonton". This document was prepared by the City's Law Branch for this appeal. Mr. Wakefield quoted from the supplemental submission:

However, the DC2 Zoning for this site expressly allows the Development Officer authority to grant relaxations to "Sections 50-79 of the Zoning Bylaw" and "the provisions of this district" where a variance would be "keeping with the general purpose of this District and would not affect the amenities, use and enjoyment of neighbouring properties". This authorization is found in s. 4(n) of the DC2 Zone...

[T]he position of the City of Edmonton is that the Board does have the authority to exercise variance power if the Board finds that the Development Officer did not follow the instruction of City Council.
[emphasis per original document]

- [18] The Development Officer in his refusal simply noted the shortfall in the required 100-metre separation distance, but did not consider the authority that he had to vary this requirement. Mr. Wakefield is of the view that the Development Officer erred in light of DC2.1040.4(n) and (o) and in light of the recent DC2 rezoning.
- [19] As per the *Garneau* case, the Development Officer has two sources of variance power. In the matter before us they are found in Section 11 of the *Edmonton Zoning Bylaw*, which is the general variance power, and in subsections DC2.1040.4(n) and (o), the specific variance powers for the DC2.
- [20] Mr. Wakefield quoted further from the City's supplemental submission, which he said showed how broad the Development Officer's variance power is:

Although the DC2 expressly states that s. 70 requirements apply, this is subject to the ability of the Development Officer to grant variances to ss. 50-75 and "the provisions of [the] district". Not only can the Development Officer vary s. 70 itself, but he is also authorized to vary s. 5(d) of the district- the very *requirement* to apply s. 70.

- [21] The Board must decide if a variance is warranted and if such a variance would be in keeping with the general purpose of the District and would not affect the amenities, use and enjoyment of neighbouring properties.
- [22] Tab 10 is a copy of the rezoning report that went to council. The purpose of the rezoning was stated as: “to add Cannabis Retail Sales to the list of allowable uses within the approved DC2.”
- [23] Under the heading, The Application, from page 2 of the report:
- This application proposes to add Cannabis Retail Sales to the list of allowable uses within the approved DC2. The current DC2 provision provides for convenience commercial and personal service uses, including minor alcohol sales, which are intended to serve the day to day needs of resident within the adjacent residential neighbourhood.
- [24] Under the heading, Site and Surrounding Area, from page 2 of this rezoning report it states:
- The existing DC2 Provision accommodates a range of commercial shopping uses in a number of buildings on the subject site.
- The last paragraph under this heading points out that the Jackie Parker Recreational Area is located across 50 Street.
- [25] The last paragraph under the heading Planning Analysis, from page 3 of the rezoning report states:
- In terms of compatibility, the proposed commercial development is located on a busy arterial roadway. Given the location and surrounding uses, the proposed development will be compatible with adjacent land uses.
- [26] In Fire and Flower’s arguments (Tab 11) they state:
- This rezoning for cannabis retail was recommended with full support from the City of Edmonton Planning Department as compatible with existing land uses.
- [27] This was site-specific re-zoning and there is only one commercial building on site. Any use within that building would violate the 100 metre separation distance.
- [28] 50th street at this location is identified as a Highway Connector in the City of Edmonton 2009 Transportation Master Plan and must include a 180-metre right-of-way. If the required right-of-way is incorporated, the boundary of Jackie Parker Park Recreational Area would be at the edge of the right-of-way, not at the edge of the street itself.

Therefore, the measurement from the door of the proposed cannabis retail store to the edge of Jackie Parker Recreational Area is actually 94.95 metres.

- [29] The question of whether the variance would affect the amenities, use and enjoyment of neighbouring properties is answered by both Edmonton City Council and members of the Administrative Staff from the City Planning Department. In the December 10th public hearing agenda package, the report on item 3.2, prepared by Don Read, Principal Planner for the City of Edmonton and approved by Tim Ford, General Supervisor for the Core and Mature Communities Area of the Planning Branch of the Urban Form & Strategic Development Department, it was stated that:

In terms of compatibility, the proposed commercial development is located on a busy arterial roadway. Given the location and surrounding uses, the proposed development will be compatible with adjacent uses.

- [30] Mr. Wakefield referred to SDAB decision SDAB-D-17-071 [*Glenora Liquor Store*] (Tab 15). In that case the Board was of the view that it did not make sense that City Council would allow alcohol sales to be a listed use on a site-specific DC2 when a strict application of the separation distance regulations would mean no such use could be developed. The Board decided this was not Council's intention and concluded that the Development Officer had not followed the directions of Council.
- [31] The DC2 Provisions in *Glenora Liquor Store* provided no specific variance powers to the Development Officer, yet the Board still granted the required variance. In the current case before the Board, subsections DC2.1040.4(n) and (o) provide wide variance powers to the Development Officer and the Board inherits that same variance power in today's appeal.
- [32] SDAB decision SDAB-D-19-050 [*First Capital Asset Management*] (Tab 16) concerned property located in a DC1 District in which a larger area was rezoned than in the DC2 situations. It was similar to the *Glenora Liquor Store* case where a use was listed but strict separation distance regulations prevented development. The Board ruled that, when Council rezoned the district to allow alcohol sales knowing there was a park across the street, Council intended that a variance to the separation distance should be granted if a strict application of the separation distance would mean alcohol sales could not be developed in the district.
- [33] In conclusion, the Development Officer did not exercise his variance power and showed no indication that he recognized he had variance power. No representative of the City is at today's hearing and there were no written objections from any neighbours and no one appeared in opposition.
- [34] The Board should find that the Development Officer did not follow the directions of Council and should waive the separation distance requirement.
- [35] The Appellant provided the following responses to questions from the Board.

- a) The park is not fenced but there is a berm along 50 Street. Also, there is a long line of trees between 50 Street and the park.
- b) The Appellant could not explain why different sections of the bylaw are referred to in subsections DC2.1040.4(n) and (o). However Section 70 which contains the Special Land Use Provisions relating to Cannabis Retail Sales is encompassed by both subsections; therefore, the Development Officer has been granted the power to vary Section 70, regardless of whether subsection DC2.1040.4(n) or (o) applies. There may be some question as to the drafting quality of this DC2; however, the intent is clear.
- c) This appeal was originally scheduled for an earlier hearing but was adjourned to explore the true intent of the legislation. Mr. Wakefield suggested that one can infer from the absence of any representative of the City and from Mr. Gunther's brief that it appears that the City is not opposing the proposed development on legal grounds.

ii) Position of the Development Officer, Mr. Welch

[36] The Development Authority did not appear and the Board relied on the written submissions of the Development Officer, Mr. Welch, and the supplemental submission of Mr. Gunther, City Law Branch.

Decision

[37] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
 - customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
 - the exterior of all stores shall have ample transparency from the street;
 - Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
 - Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

2. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).

NOTES:

1. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
3. Signs require separate Development Applications.
4. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
5. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
6. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

[38] In granting the development the following variance to the Zoning Bylaw is allowed:

1. The separation distance of 100 metres from public lands (Jackie Parker Recreational Area) required by Section 70.2(b) of the *Edmonton Zoning Bylaw* is waived.

Reasons for Decision

[39] This appeal involves the refusal of a Development Permit for Cannabis Retail Sales, which is a Listed Use under section DC2.1040.3(b) in this Site Specific Development Control Provision (the “DC2”).

[40] The Development Officer refused to issue the Development Permit because the DC2 Site is located 47 metres from Jackie Parker Recreational Area, which is zoned (AP) Public Parks Zone. Section 70.2(b) of the *Edmonton Zoning Bylaw* requires a 100-metre separation distance from, among other things, any Site being used as public lands. Section 70.3(d) defines “public lands” as limited to Sites zoned AP (Public Parks Zone) and Sites zoned A. Section 70.3(a) states that the separation distance in Section 70(2) shall be measured from Site boundary to Site boundary.

[41] Section 685.4(b) of the *Municipal Government Act* states:

(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions, it may, in accordance with the directions, substitute its decision for the development authority’s decision.

[42] Therefore, in this appeal, the first issue for the Board is to determine whether the Development Officer followed the directions of Council. In determining the directions of Council, the Board considered the following.

- a. On December 10, 2018, Council amended DC2.1040 (the “DC2 bylaw”) by, among other things, adding Cannabis Retail Sales as a Listed Use to the DC2. The report that went to Council, which was prepared by City Planning with respect to this amendment, recommended adding Cannabis Retail Sales as a Listed Use because “in terms of compatibility, the proposed commercial development is located on a busy arterial roadway. Given the location and surrounding Uses, the proposed development will be compatible with adjacent planned Uses.” The report also noted that Jackie Parker Recreational Area is across 50 Street from the DC2.
- b. The DC2 has only one commercial building on the Site with multiple bays in it. Because separation distances between Cannabis Retail Sales and public lands are required to be measured from Site boundary to Site boundary in Section 70 of the *Edmonton Zoning Bylaw*, no Cannabis Retail Sales within this DC2 would be compliant with the required 100-metre separation distance to Jackie Parker Recreational Area. The separation distance between the Sites is 47 metres.

- c. Subsection 5(d) of the DC2 bylaw states:

Cannabis Retail Sales shall be developed in accordance with Section 70 of the *Zoning Bylaw*.

- d. Subsection 4(n) of the DC2 bylaw states:

The Development Officer may grant relaxations to Sections 50 to 79 of the *Zoning Bylaw* and the provisions of this District, if, in his opinion such a variance would be in keeping with the general purpose of this District and would not affect the amenities, use and enjoyment of neighbouring properties.

- e. Section 70 of the *Edmonton Zoning Bylaw* is the Special Land Use Provision that deals with Cannabis Retail Sales, a portion of which is set out below:

70. Cannabis Retail Sales

...

2. Any Site containing Cannabis Retail Sales shall not be located less than:

...

- b. 100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.

3. For the purposes of subsection 2:

- a. separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;

...

- e. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.

...

5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

[43] Section 1 of the DC2 bylaw states that the General Purpose of the District is:

...to accommodate a limited range of local convenience commercial and personal service uses which are intended to serve the day-to-day needs of the neighbourhood residents, with site development criteria to ensure that the commercial development will be compatible with the adjacent residential Zonings.

[44] Based on the above, the Board concludes that the directions of Council are as follows:

- a. Cannabis Retail Sales is a Listed Use in the DC2 because it is reasonably compatible with surrounding developments, including Jackie Parker Recreational Area.
- b. The Development Officer has been given specific variance power in the DC2 bylaw to deal with the fact that Cannabis Retail Sales could not be developed in the DC2 unless the required separation distance was relaxed beyond what is allowed in Section 70 of the *Zoning Bylaw*.
- c. Subsection 4(n) of the DC2 bylaw gives the Development Officer the authority to grant variances to Section 70, notwithstanding the limitations on the variance power contained in Section 70, if such variances would be in keeping with the General Purpose of the District and would not affect the amenities, use and enjoyment of neighbouring properties.

[45] Did the Development Officer follow the directions of Council?

[46] The Development Officer's written submission refers to his variance powers in both Section 70 of the *Zoning Bylaw* and in Subsection 4(n) of the DC2 bylaw. He concludes that that the specific variance power in Section 70 overrides the general variance power in Subsection 4(n). This is an error. Section 70 is not a specific variance power; it is the general regulation that applies to all Cannabis Retail Sales. The variance power found in Subsection 4(n) is the variance power that is specific to this DC2.

[47] The case of *Garneau Community League v Edmonton (City)*, 2017 ABCA 374, makes it clear that the specific variance power contained in a DC bylaw takes precedence over the general variance power found in the *Edmonton Zoning Bylaw*.

[48] Further, the Development Officer was apparently unaware that Council had amended the DC2 to add Cannabis Retail Sales as a Listed Use on the recommendation of City Planning that Cannabis Retail Sales was reasonably compatible with the surrounding Uses, including the park.

[49] The Board notes that, without the ability to vary the separation distance required by Section 70.2, it would make no sense to add Cannabis Retail Sales as a Listed Use to the DC2 because no such Use could be developed on that Site without a variance of 53 metres.

- [50] The Board concludes that the Development Officer did not follow the directions of Council because he misinterpreted the nature and extent of the specific variance power he was given. Accordingly, the Board has the power to substitute its decision for the Development Officer's in keeping with Council's directions.
- [51] The Board is of the opinion that, pursuant to the variance power in Subsection 4(n), the separation distance in Section 70.2 should be waived to allow the proposed development for the following reasons:
- a. The necessary variance is in keeping with the General Purpose of the District, which is "...to accommodate a limited range of local convenience commercial and personal service uses which are intended to serve the day-to-day needs of the neighbourhood residents, with site development criteria to ensure that the commercial development will be compatible with the adjacent residential Zonings."
 - b. The variance will not affect the amenities, use and enjoyment of neighbouring properties. The proposed development is separated from Jackie Parker Recreational Area by 50th Street, which is an arterial roadway with five traffic lanes at this location as well as a large, central boulevard. This mitigates the decreased separation distance. Also, the fact that no one opposed the proposed development either in person or in writing is an indication that the neighbours are not concerned about the effect the proposed development will have on the amenities, use and enjoyment of neighbouring properties.
- [52] For all of the above reasons the appeal is allowed.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson, Mr. J. Kindrake, Ms. E. Solez, Ms. S. McCartney,

CC: City of Edmonton, Development & Zoning Services - I. Welch / H. Luke
City of Edmonton, Law Branch – G. Gunther
Dentons – K. Wakefield

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. 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. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.