



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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**SDAB-D-17-081**

Application No. 242715687-001

An appeal to construct an addition to an Accessory Building (11.51 metres by 14.94 metres addition to a barn) was **TABLED** to May 24 or 25, 2017



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Date: May 19, 2017  
Project Number: 242085428-001  
File Number: SDAB-D-17-082

**Notice of Decision**

- [1] On May 4, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on April 11, 2017. The appeal concerned the decision of the Development Authority, issued on April 6, 2017, to refuse the following development:

Add Minor Alcohol Sales as an Accessory Use to an existing Creation and Production Establishment. (STRATHCONA SPIRITS)

- [2] The subject property is on Plan I Blk 60 Lot 19, located at 10122 - 81 Avenue NW, within the DC1 (15813) Direct Development Control Provision. DC1 (15811), the Pedestrian Commercial Shopping Street Overlay and the 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 refused permit and permit application, with attachments and plans;
- Canada Post receipt confirming delivery of the refusal decision;
- Development Officer's written submissions dated April 24, 2017; and
- Appellant's submissions and supporting materials.

**Preliminary Matters**

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] 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, Strathcona Spirits*

- [7] The Appellant was represented by Mr. A. Smith.
- [8] The Board explained that the subject property falls within a Direct Control District, therefore the Board's authority to vary the Development Officer's decision is constrained by section 641(4)(b) of the *Municipal Government Act*. The Board provided an opportunity for the Appellant to review this provision, and requested that the Appellant provide submissions as to how the Development Authority did not follow the directions of council.
- [9] The Appellant submitted that the intent of City Council in enacting the 500-metre separation distance requirement between Alcohol Sales Uses was to prevent the proliferation of liquor stores. In his view, the proposed development is not a typical liquor store that should be captured by this requirement. In support, he referred to two breweries which sell their product for on-site consumption, Situation Brewing and Yellowhead Brewing, the latter located on 105 Street and around 103 or 104 Avenue. Both of these breweries are located within 500 metres of liquor stores. Upon questioning by the Board, the Appellant clarified that these other breweries are classified as Restaurants or Bars rather than Alcohol Sales Uses.
- [10] The Appellant also submitted that the intent of this Direct Control District is to maintain the character of the neighbourhood. As a community-minded organization and as Edmonton's first craft distillery, his business actively contributes both to the community, and to maintaining the character of the neighbourhood. In support, he reiterated his written submissions, noting the following unique features of the business:
- a) The use of local talent and ingredients in the creation of the product;
  - b) The cork of every bottle features the façade of the building in which the business is located;
  - c) Community support for, and interest in, the business as demonstrated by a petition signed by property owners within the 60-metre notification area, a letter of support from the Old Strathcona Business Association, and Edmonton Food Tours' interest in adding the distillery to its tour; and
  - d) Limited operating hours geared toward attracting connoisseurs or enthusiasts rather than the late night bar crowd.
- [11] The Appellant explained that the business does not currently have operating hours open to the public. The product is currently sold directly to more exclusive establishments in Edmonton and Calgary. However, if this application is approved, the intent is to open the doors to the public on Friday evenings from 5 p.m. to around 8 p.m. or 9 p.m., and on the weekend around 11 a.m. to 6 p.m. During this time, samplings of the product can be made available. If there is interest, operating hours may be extended to other weeknights. He emphasized that the hours of operation will be unlike typical late night bars and pubs,

and that he would have no concerns with conditions restricting the operating hours or the sale of only products produced on site.

- [12] The Board noted that the original permit for the Creation and Production Establishment has a condition prohibiting retail sales and consumption of alcoholic beverages. The Appellant acknowledged his acceptance of that condition when the permit was granted. However, the business has since evolved, and he would now like to open the doors to the community to sell his products for off-site consumption.
- [13] Upon questioning by the Board, he explained that samples of alcohol produced on-site would be provided in small quantities of about one-eighth of an ounce and served over a standard sized retail counter, not an extended bar. This retail counter is the same counter that would be used to conduct sales transactions. At the moment, there is no intention to serve food with the samples, but if that is requested by the customers, then he would like to be able to meet their needs.
- [14] Referencing the letter from the Old Strathcona Business Association, the Board noted that in late June Zoning Bylaw amendments will be submitted to Council. If passed, these amendments would create a new Use class to allow craft distilleries such as his to sell their products for off-site consumption without being classed as an Alcohol Sales Use. This would avoid the 500-metre restriction. However, the Board is bound by the applicable laws and regulations as they apply at the time of the appeal.

*ii) Position of the Development Authority*

- [15] The Development Authority was represented by Mr. P. Belzile, Development Officer.
- [16] Regarding the two breweries, Yellowhead Brewery and Situation Brewery, the former has an approved permit for a Bar and Neighbourhood Pub and the latter for a Restaurant.
- [17] The Development Officer referred to the definition of Restaurants under section 7.4(45), which provides as follows:

**Restaurants** mean development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.

- [18] Under this definition, a Restaurant would not require a separate development permit for alcohol sales. A Restaurant selling its own beer for off-site consumption does not require a separate Alcohol Sales development permit. A Restaurant selling beer produced on-site as a “take-out” option is a situation where the customer orders the product ahead of time,

then proceeds to eat and drink on the premises before getting the beer when he leaves the Restaurant. A typical Alcohol Sales Use is where the customer enters the establishment and purchases the beer straight off the shelf for consumption outside of those premises. This is the situation with the Appellant's proposed Use where no food or drink, other than small samples, would be served on the premises. The current development permit allows only for the manufacture of product on-site.

- [19] Based on this interpretation of Restaurants, the Board questioned whether this logic could not similarly be applied to Alcohol Sales in a Creation and Production Establishment. The Development Officer distinguished Restaurants from Creation and Production Establishments, which is defined under section 7.4(13) as follows:

**Creation and Production Establishments** means development used for the custom creation or small-scale fabrication of goods produced in limited quantity, or for the creation, training and rehearsal of performance arts. Accessory Uses may include the retail sale of goods produced on Site. Typical uses include literary, visual, craft, design, and interdisciplinary and performance arts studios.

- [20] The Development Officer noted the inclusion of a specific reference to "Accessory Uses" (as capitalized and defined within the *Edmonton Zoning Bylaw*), which does not occur in the definition of Restaurants. This specific inclusion therefore requires that where another Use is being contemplated for a Creation and Production Establishment, a separate Accessory Use application is required. There is no such similar stipulation in the definition of Restaurants.

- [21] In this case, the Applicant proposes to open its door to the public, albeit with limited operating hours, to provide samplings and to engage in the sale of its product on-site for off-site consumption. In his view, this type of activity is more appropriately classified as a Minor Alcohol Sales, which is defined under section 7.4(32) as follows:

**Minor Alcohol Sales**, means development used for the retail sale of any and all types of alcoholic beverages to the public. This Use may include retail sales of related products such as soft drinks and snack foods. The maximum Floor Area for this Use shall be no more than 275 m<sup>2</sup> per individual business premises.

- [22] Based on the definition of Creation and Production Establishments, it was therefore the Development Authority's position that a separate Accessory Use permit for Minor Alcohol Sales would be required. By way of analogy, the Development Officer noted that even if the Applicant were in the business of producing chocolate bars and now wished to be able to sell those chocolate bars on-site for off-site consumption, a separate Accessory Use application would be required for a General Retail Sales Use.

- [23] The Board observed that there are other Uses in the City such as industrial developments which do not require separate Accessory Use applications, and questioned why a separate

application would be required in this case. The Development Officer referenced section 95, the special land use provisions for General Industrial Uses. He noted that section 95(1) contemplates specific Accessory activities such as indoor display, office, technical or administrative support areas or any retail operations so long as such activities do not exceed 33 percent of the total Floor Area of the building devoted to the General Industrial Use. In effect, this provision is saying that these activities are deemed to be Accessory to the General Industrial Use, therefore, a separate application is not required. No such special land use provision applies for Creation and Production Establishments.

- [24] The Board noted that there are aspects of the proposed development which differ from conventional liquor stores, and questioned whether these differences were taken into account. The Development Officer acknowledged that if a liquor store such as the Liquor Depot were to move into this location, it would require a new permit application as its operations differ from the existing Creation and Production Establishment. Liquor stores typically have different volumes and brands of products available for purchase off the shelf, and more cash on-site when compared to a distillery. A liquor store may also give rise to some of the concerns regarding neighbourhood proliferation that may not apply to a distillery.
- [25] That being said, the Use class that is being considered is Minor Alcohol Sales, not “liquor store”. The Applicant’s proposal will result in some change to the use and intensity of the business. By adding the retail component, there will be more customers accessing the site, whereas the only traffic being generated now is from employees producing and packaging the product. The land use impacts would not be the same as what is typically expected for a Creation and Production Establishment.
- [26] The Board noted that this Direct Control District specifically references the Pedestrian Commercial Shopping Street Overlay, which encourages small storefronts and active pedestrian traffic. The Accessory retail sales activities of the distillery would therefore appear to be consistent with the pedestrian character of this shopping strip. While the Development Officer acknowledged the incorporation of the Overlay within this Direct Control District, he also noted that there is specific incorporation of the regulations of the CB2 Low Intensity Business Zone, including the applicable special land use provisions governing Minor Alcohol Sales under section 85, and by extension, the 500-metre separation distance requirement between Major or Minor Alcohol Sales Uses.
- [27] Referencing the Alcohol Sales and Parks Map submitted by the Development Authority, the Board questioned the methodology for measuring separation distances between Alcohol Sales Uses. Referencing section 85(1), the Development Officer noted that the special land use provisions for Minor Alcohol Sales do not require a specific methodology. For ease and consistency, the Development Authority simply applies a direct line measurement, rather than taking into account more variable measurements such as actual walking distances.
- [28] Upon questioning by the Board, he acknowledged that separation distance requirements for other types of Uses such as Digital Signs may stipulate a specific methodology. Upon

review of the Map, he also confirmed that the property located 408 metres away from the subject development is actually a General Industrial Use and not a Major or Minor Alcohol Sales Use.

- [29] Regarding the upcoming bylaw amendments mentioned in the letter from the Old Strathcona Business Association, Mr. Belzile noted that if those amendments are passed in June, it is possible that the proposed development would become a permitted Use or fall under a different Use Class. As such, even if the Board were to deny this appeal, the Applicant would likely be able to reapply in less than six months with a new scope of application under a different Use Class.

*iii) Rebuttal of the Appellant*

- [30] The Appellant reiterated his submissions, emphasizing the unique nature of the business.

**Decision**

- [31] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

**Reasons for Decision**

- [32] This appeal involves a proposed development within a Direct Control District. Section 641(4)(b) of the *Municipal Government Act* states:

Despite section 685, 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.

- [33] Accordingly, the Board must determine whether the Development Authority followed the directions of Council before it can vary the Development Officer's decision.
- [34] The Appellant has an approved development permit for a Creation and Production Establishment (distillery) with a condition that any retail sale or consumption of alcoholic beverages on-site is prohibited. Section 7.4(13) of the *Edmonton Zoning Bylaw* defines Creation and Production Establishment as follows:

**Creation and Production Establishments** means development used for the custom creation or small-scale fabrication of goods produced in limited quantity, or for the creation, training and rehearsal of performance arts. Accessory Uses may include the retail sale of goods produced on Site. Typical uses include literary, visual, craft, design, and interdisciplinary and performance arts studios.

- [35] The Appellant has applied for an Accessory Use Minor Alcohol Sales permit to allow the establishment to sell the alcohol produced on-site for off-site consumption. The Development Officer interpreted the Use Class definition for Creation and Production Establishment as requiring an additional development permit for this type of Use. He was of the view that a Minor Alcohol Sales development permit would be required.
- [36] Section 4(a) of this DC1 Direct Control Provision states that “development regulations in this Provision shall be as prescribed in the (CB2) General Business Zone”. Under section 340.3(18) of the CB2 Zone, Minor Alcohol Sales is a discretionary Use.
- [37] Section 85(1) of the special land use provisions governing Minor Alcohol Sales states: “Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.”
- [38] Section 85(6) states that, notwithstanding Section 11 of the *Zoning Bylaw* (the section that gives Development Officers the discretion to grant variances), the Development Officer shall only grant a variance to Section 85(1) as outlined in subsections 85(7), 85(8) and 85(9). None of those subsections apply to the instant situation. Accordingly, the Development Officer has no discretion to vary the 500-metre separation distance restriction on Major or Minor Alcohol Sales.
- [39] The Development Officer determined that there were five other Minor or Major Alcohol Sales Uses within 500 metres of the subject property and refused to issue the development permit to allow the sale of alcohol on the premises.
- [40] The Board is of the view that the Development Officer’s interpretation of Section 7.4(13) is reasonable in these circumstances. Although the Use Class definition of Creation and Production Establishments may include Accessory Uses to sell products produced on-site, the Appellant’s existing development permit includes a condition prohibiting the sale or consumption of alcohol on-site. There is no retail activity allowed on-site presently. Allowing customers to attend the site to purchase products would result in an intensification of use, so an additional development permit is required. The only possible Use Class that would allow the sale of alcohol is Minor Alcohol Sales.
- [41] The Development Officer had no choice but to refuse to issue the development permit because of Section 85(1). He had no discretion to vary the 500-metre separation distance because of Section 85(6). Accordingly, the Board is of the opinion that the Development Officer did follow the directions of Council. Pursuant to Section 641(4)(b) of the



*Municipal Government Act*, this Board has no jurisdiction to vary the Development Officer's decision.

- [42] The Appellant made the argument that his establishment is not the type of Alcohol Sales Use that Council intended to restrict because it is not what one would consider a typical liquor store. The Board heard from the Development Officer that draft regulations have been prepared to deal with situations like the Appellant's, where alcohol is being prepared in a craft brewery or distillery, that would take such Uses outside the definition of Major or Minor Alcohol Sales Uses. He further indicated that these regulations would be considered by Council in June.
- [43] As such, although the Appellant's development permit application must be refused in this case, if those regulations are passed the Appellant may be able to apply for a different type of development permit in the not too distant future that would allow him to sell alcohol on-site. However, those regulations have not been passed yet, so neither the Development Officer nor the Board can consider them in making their decision.
- [44] The Board acknowledges the Appellant's evidence of significant community support, including support from the immediate neighbours and the Old Strathcona Business Association. However, that community support is not relevant to the Board's determination as to whether the Development Officer followed the directions of Council.
- [45] The Board acknowledges that allowing retail sales at this site would enhance the pedestrian-friendly nature of the area, which is one of the goals of the Pedestrian Commercial Shopping Street Overlay. However, the specific restriction on separation distances between Major or Minor Alcohol Sales Uses overrides that consideration in this case.

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

Board members in attendance:

Ms. P. Jones, Mr. A. Bolstad, Ms. D. Kronewitt Martin, Mr. K. Hample

**Important Information for the Applicant/Appellant**

1. 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.
  
2. 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.*