



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 20, 2018
Project Number: 287274750-001
File Number: SDAB-D-18-203

Notice of Decision

- [1] On December 6, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 5, 2018**. The appeal concerned the decision of the Development Authority, issued on October 16, 2018, to refuse the following development:

Change the Use from a Pawn Shop and a Restaurant to a Cannabis Retail Sales and construct interior alterations.

- [2] The subject property is on Plan I Blk 65 Lots 13-15, located at 10650 - 82 Avenue NW, within the (CB2) General Business Zone. The Main Streets 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair 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 Mr. R. Noce, Legal Counsel for the Appellant, Alcanna Cannabis Stores Ltd., who was accompanied by Ms. M. Kiziak*

- [7] Mr. Noce referred to his written submission and PowerPoint presentation.
- [8] Section 70 of the *Edmonton Zoning Bylaw* (the *Bylaw*) sets out development regulations for Cannabis Retail Sales, including the minimum required 200 metre separation distance from a public library, or for public or private education uses, which in this case is the Old Scona High School. Section 70(2) states the 200 metre separation distance must be measured from the closest point of the subject site boundary to the closest point of another site boundary.
- [9] Pursuant to section 70(4), notwithstanding section 11 of the *Bylaw*, a Development Officer is not allowed to grant a variance to subsection 70(2) or 70(3), the minimum required separation distances.
- [10] The proposed development is a Permitted Use in the (CB2) General Business Zone and the proposed development complies with all of the requirements of the *Gaming, Liquor and Cannabis Regulation* (the *Regulation*).
- [11] Part 4, Division 1 of the *Regulation* is the relevant part relating to Cannabis Licenses.
- [12] Section 105(3)(b) under the *Regulation* deals with the restrictions on the locations of licensed cannabis premises. That section stipulates distances between those premises and certain other uses. The proposed development is compliant with the *Regulation* regarding separation distance.
- [13] The decision of *Thomas v Edmonton (City)*, 2016 ABCA 57 addressed the variance powers of the Board pursuant to section 687(3)(d) of the *Municipal Government Act*. Paragraph [29] of the decision states that “To relieve against hardship, the Legislature has conferred on subdivision and development appeal boards the authority to relax – that is vary, dispense with or waive – development standards in the applicable land use bylaw providing certain conditions as set out in section 687(3)(d) are met.”
- [14] The *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 decision is helpful and explains at paragraph [6] and [7] that “We, the Board, have a power to grant variances, but the bylaw creates a presumption of harm to the public, and we the Board cannot intervene unless that presumption is rebutted by the applicant. That is an error. The legal test for such waivers is in the Municipal Government Act, and is clear. Section 687(3)(d) mandates this test: the proposed development ... would not (A) unduly interfere with the amenities of the neighbourhood, or (B) materially interfere with or affect the use, enjoyment or value of neighboring parcels of land . . .”

- [15] Section 687(3) of the *Municipal Government Act* was recently amended to include subsection (a.4) that requires that the Board must “comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act described in the Cannabis Licence and distances between those premises and other premises.” This means that harm cannot be presumed by the separation distance.
- [16] Ms. Kiziak referenced conceptual drawings of the proposed Cannabis Retail Sales and advised that it will be operated by Alcanna Cannabis Stores Limited Partnership. Its affiliated companies are Liquor Depot and Wine and Beyond which employs 900 people in the Edmonton area.
- [17] She referred to the PowerPoint presentation and provided information about each slide including the proposed renderings.
- [18] Their brand has been built on relationships and they take pride in working collaboratively with regulators. They go above and beyond the regulated requirements. The site has a specific security plan, including security cameras and key card access.
- [19] Locations are chosen to ensure security for customers and employees. Stores will be bright, safe and inviting. Their goal is to make product accessible in a clean and safe manner.
- [20] The public cannot see inside the store. The windows have borealis banners behind the exterior windows to ensure compliance with regulators while allowing for natural light.
- [21] Mr. Noce stated that the Appellant's real estate focus is on large commercial developments with sophisticated landlords that prefer an upscale and mature concept. This concept will be ahead of the curve and lead the market to responsible use and consumption.
- [22] He provided an overview of the neighbourhood showing photographs of the site and the general area.
- [23] This location is an appropriate place for Cannabis Retail Sales as the proposed location is in a building with ample parking. Approving this Cannabis Retail Sales would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [24] The proposed development will be located in an L-shaped strip mall. There is no access to the subject site from the rear of the building. The Old Scona High School is in the northeast corner from their site.
- [25] Mr. Noce referred to several maps showing a variety of distances from the subject site to other areas of the neighbourhood including the school and the school site.

- [26] Using the mode of measurement established in section 70(3) (from the closest point of the subject site boundary to the closest point of another site boundary), the separation distance is 179 metres. The distance from the edge of the building where the proposed Cannabis Retail Sales will be located to the edge of the school building is approximately 250 metres. The walking distance using sidewalks from the Cannabis Retail Sales entrance to the school site is 334 metres and 419 metres to the school entrance.
- [27] Based on section 105(3)(b) of the *Regulation*, the Cannabis building is over 150 metres to the school site.
- [28] Mr. Noce referred to a photograph showing the side of the school to the sports field. If you exit the Cannabis store, you will see Whyte Avenue but you will not see the sports field or the school. The proposed Cannabis store is separated by several blocks of development, roads, and alleys and not visible from the school.
- [29] Whyte Avenue is a commercial corridor which fits the location for the proposed Cannabis Retail Sales.
- [30] The proposed Cannabis Retail Sales would not offend the generally accepted planning desire for diversity in the area; would not preclude the establishment of other uses in the area; and would add to the economic diversity sought by the City.
- [31] Mr. Noce referred to the City of Edmonton Public Places Bylaw 14614:
1. The greenspace at Old Scona Academic Public School (Grade 10 — 12) would be defined as "parkland" (section 11(g) of the Public Places Bylaw);
 2. There is NO SMOKING allowed of any tobacco product or cannabis on or within parkland (section 12.1(1)(f) of the Public Places Bylaw);
- [32] Section 90.28 of Part 3.1 (Cannabis) of the *Gaming, Liquor and Cannabis Act* sets out the laws relating to smoking Cannabis:
- 90.28 No person may smoke or vape cannabis*
- a) in any area or place where that person is prohibited from smoking under the Tobacco and Smoking Reduction Act or any other Act or the bylaws of a municipality,*
 - b) on any hospital property, school property or child care facility property,*
 - c) in or within a prescribed distance from*
 - i. a playground,*
 - ii. a sports or playing field,*

- iii. *a skateboard or bicycle park,*
- iv. *a zoo,*
- v. *an outdoor theatre,*
- vi. *an outdoor pool or splash pad, or*
- vii. *any other area or place that is prescribed or otherwise described in the regulations.*

- [33] Based on the above, there will not be anyone smoking tobacco or cannabis on the subject site.
- [34] Mr. Noce reiterated that the *Newcastle* decision has made it clear that a presumption of harm cannot be inferred from a non-compliance with the *Bylaw*;
- [35] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [36] Mr. Noce stated that the Board should exercise its variance powers as the evidence clearly shows that the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [37] Mr. Noce provided the following information in response to questions by the Board:
- a. There is no public access to the Cannabis Retail Sales from the rear of the building.
 - b. He could not confirm if the Old Scona High School and the sports field was one complete site.
 - c. The Cannabis Retail Sales is located in a strip mall. He referred to a photograph showing the subject site and other businesses in the strip mall.
- [38] Mr. N. Kwan stated that he is a managing partner who owns the subject site.
- [39] Mr. Kwan provided the following information in response to questions by the Board:
- a. The parking area is monitored and he does not see many students from the school at the subject site. People accessing the businesses on the site are mostly people who work in the area.
 - b. The Cannabis Retail Sales will be in the location of Cash Canada and the Pizza restaurant.

c. The majority of developments around the subject site are medium density developments.

[40] Mr. Noce indicated that they are agreeable to all of the conditions suggested by the Development Officer. However, AGLC has placed a moratorium on licenses due to the low supply of Cannabis. If the Board approves the proposed development, he would like the Board to impose a condition that the development must commence within nine (9) months of when AGLC removes its temporary licensing suspension.

[41] If they are required to wait until after the moratorium is lifted, they could lose their development permit.

ii) Position of the Development Officer, Mr. S. Chow

[42] The Development Authority did not appear at the hearing and the Board relied on Mr. Chow's written submissions.

Decision

[43] 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 must commence within nine (9) months of the date when AGLC removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.
2. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5m (14.76 ft.) setback. (Reference Section 340.4(3) & (5)).
3. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c).

ADVISEMENTS:

- a. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
- b. Signs require separate Development Applications.

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

1. The minimum required 200 metres separation distance between the Cannabis Retail Sales Site and a School Site (Old Scona Academic Public School) pursuant to section 70(2) is reduced by 21 metres to permit a minimum allowed separation distance of 179 metres.

Reasons for Decision

[45] The proposed development is to change the Use from a Pawn Shop and a Restaurant to a Cannabis Retail Sales. The subject Site is located in the (CB2) General Business Zone. Pursuant to section 340.2(6) of the *Edmonton Zoning Bylaw*, Cannabis Retail Sales is a Permitted Use in this zone.

[46] The Board is mindful of section 687(3)(a.4) of the *Municipal Government Act* (the *Act*). This section directs that in making this decision, the Board must comply with applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act*, respecting the location of premises described in a cannabis licence and distances between those premises and other premises. Based on the submissions of the parties, the Board finds that requirements of those regulations have been satisfied and this Board has met its obligation under section 687(3)(a.4) of the *Act*.

[47] The issue before the Board is whether a variance of 21 metres could be granted in respect of the regulations in section 70(2) of the *Edmonton Zoning Bylaw*.

[48] Section 70(2) requires a 200 metre separation distance between the Site of a Cannabis Retail Sales and any Site being used for public education (the "School").

[49] The Appellant conceded that as calculated by section 70(2), this separation distance was deficient by 21 metres.

- [50] The requested variance is granted for the following reasons:
- a. Due to the extensive development between the School and the proposed Cannabis Retail Sales, it would take someone walking 334 metres to get to the location from the closest point of the Site on which the School is located.
 - b. If one considered the distance from the Cannabis Retail Sales door to the door of the School it is 419 metres.
 - c. While it may be in 200 metres as the “crow flies” it will take much longer for anyone to reach the School Site from the Cannabis Retail Sales location.
- [51] The School Site contains a large sports field, is not visible from the retail location, and is not on the same Avenue as the subject Site. It is not likely that patrons from the Cannabis Retail Sales would find their way to the sports field to consume cannabis.
- [52] The Board has imposed conditions suggested by the Development Officer with one condition being amended.
- [53] Section 70(6) obliges the Development Officer to a two part condition for a Cannabis Retail Sales. The Board is granting a variance to section 70(6) that states:
- The Development Officer shall impose a condition on any Development Permit issued for Cannabis Retail Sales requiring that the development:
- a. shall not commence until authorized by and compliant with superior legislation; and
 - b. must commence within nine (9) months of the date of approval of the Development Permit.
- For the purposes of section 70(6), development commences when the Cannabis Retail Sales Use is established or begins operation.
- [54] On November 21, 2018, AGLC placed a temporary suspension on all new applications due to a supply shortage of legal Cannabis. As a result, there is a potential of section 70(6) to create a hardship situation. To relieve a possible hardship, the Board varied the requirement to: *development must commence within nine (9) months of the date when AGLC removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.*
- [55] The Board notes that there was no opposition received and no one appeared in opposition at the hearing.

[56] The Board finds that granting the separation distance variance and the conditions imposed 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. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in attendance:

Mr. B. Gibson; Ms. D. Kronewitt Martin; Ms. S. McCartney; Mr. L. Pratt

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. S. Chow / Mr. H. Luke

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.



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edmontonsdab.ca*

Date: December 20, 2018
Project Number: 260203962-004
File Number: SDAB-D-18-204

Notice of Decision

- [1] On December 6, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 22, 2018**. The appeal concerned the decision of the Development Authority, issued on November 21, 2018, to refuse the following development:

Construct exterior alterations to a Single Detached House (driveway extension, 1.7m x 6.1m) existing without permits

- [2] The subject property is on Plan 7823564 Blk 9 Lot 44, located at 17512 - 55 Avenue NW, within the (RF1) Single Detached Residential Zone. The West Jasper Place Outline Plan applies 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; and
 - One Online response.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Two signatures from adjacent property owners in support of the proposed development.
 - Exhibit B – Photograph of the subject Site.
 - Exhibit C – Google Earth Aerial Map

Preliminary Matters

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

- [6] The Chairman 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. (“MGA”)

Summary of Hearing

i) Position of the Appellant, Ms. Qin and Mr. Khokhar

- [8] Ms. Qin and Mr. Khokhar, appearing for Armaan Homes Inc., explained that when they applied for the house permit during construction of the house and driveway on the subject site, they spoke to Development & Zoning Services at the City of Edmonton to extend the sidewalk to the city sidewalk.
- [9] They did not apply for a development permit for the driveway extension at that time.
- [10] Ms. Qin noted that the extension will accommodate guests to access the house easily without walking on the grass.
- [11] She provided verbal evidence that there is a transformer box on one side of the property that takes up parking space.
- [12] She noted that they consider the extension as a walkway and not a driveway.
- [13] They spoke to the two immediate adjacent neighbours who are in support of the proposed development and provided the Board with their signatures (Exhibit A).
- [14] Ms. Qin provided a picture of the subject site showing the front view of the driveway and house from the sidewalk. (Exhibit B)
- [15] Ms. Qin and Mr. Khokhar provided the following information in response to questions by the Board:
- a. The driveway was poured in 2017 and the house has since been sold. They need compliance for the driveway extension now that the house is sold.
 - b. They are in agreement to installing permanent planters on the extension to prevent parking in that area despite that the new property owners do not want permanent barriers to be installed.
 - c. The double garage can accommodate three vehicles, two of which can be parked tandem inside the garage.
 - d. Ms. Qin confirmed that two vehicles can park side by side on the driveway.

- e. They both confirmed that the extension is considered a walkway and not for parking. They do not intend to park three vehicles on the driveway in front of the garage.
- f. They are acceptable to a condition to install fixed barriers to prevent parking on the extension.
- g. There is a line of plants that separates the adjacent property from the extension.
- h. She believes there is still approximately 6.0 metres from the edge of their grass line to the adjacent property to the south. There is room to park on the street between the two properties. They referred to an aerial photograph marked Exhibit C showing the parking room on the street in the cul-de-sac.

ii) Position of Affected Property Owners in Support of the Appellant

- [16] Ms. Edwin-Magras lives immediately adjacent to the subject Site to the north. She indicated that she supports this development.
- [17] Ms. Edwin- Magras noted that property owners in the cul-de-sac own several vehicles.
- [18] She provided verbal evidence that the area becomes congested when there are several vehicles parking on the street, making access in and out of the cul-de-sac difficult.
- [19] Ms. Edwin-Magras provided the following information in response to questions by the Board:
- a. She is not concerned that the parking space in front of the driveway extension will not be available.
 - b. There is a fire hydrant on the corner of the cul-de-sac where vehicles cannot park.
 - c. In her opinion, driveway extensions should be allowed to accommodate additional parking in the area.
 - d. Parking is an issue in the neighbourhood especially during holidays.

iii) Position of the Development Officer, Mr. Folkman

- [20] The Development Authority did not appear at the hearing and the Board relied on Mr. Folkman's written submission.

Decision

[21] 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 Appellant shall install a fixed barrier or planter(s) to physically separate the Walkway from the Driveway and make the hardsurfaced area compliant as shown on the approved Plot Plan dated June 10, 2016.
2. The barrier or planter(s) must be a minimum of 18 inches in height.
3. The hardsurfaced area to the south of the approved Driveway shall be used as a Walkway. No parking shall be allowed on that portion of the hardsurfaced area.
4. The barrier or planter(s) must run along at least 60 percent of the line between the approved Driveway and the hardsurfaced area acting as a Walkway.
5. Absolutely no parking is allowed within the required front yards/setbacks (Reference Section 54.2(2)(e)(i) and (ii) of the *Edmonton Zoning Bylaw No 12800*).
6. 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.
7. Lot grades must match the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5500 for lot grading inspection inquiries.

Reasons for Decision

[22] Driveways and Walkways are Accessory to a Single Detached House, which is a Permitted Use in the (RF1) Single Detached Residential Zone.

[23] The hardsurfaced area, as it currently exists, has the potential to function not only as a Driveway with an adjacent Walkway but also as an extended Driveway, which could provide for parking in the Front Yard despite that it does not lead directly to the garage.

[24] This would have the potential to reduce on-street parking, which is limited in this cul-de-sac.

- [25] The Board notes that under Section 54.1(4)(c) of the *Edmonton Zoning Bylaw*, homeowners in the area are allowed a Driveway that is the width of the garage. A Walkway that leads to the front door is also allowed.
- [26] The Board accepts the verbal evidence that the Appellant's do not treat the hardsurfaced area as a Driveway but rather as a Walkway in order for people to avoid walking on the grass.
- [27] The conditions imposed by the Board (noted above) will ensure that the hardsurfaced area not included in the original Plot Plan can be only used as a Walkway to the front door.
- [28] The existence of fixed barriers or planters 18 inches in height and running 60 percent of the length of the Driveway will make it clear to people parking on the street that the Driveway does not start until after the location of the barrier or planter.
- [29] With the conditions imposed by the Board, a variance is no longer required because the Driveway is now in accordance with the approved Plot Plan and hardsurfacing that is not on the approved Plot Plan will now be used as a Walkway.
- [30] One online response was received in support of the proposed development and the individual that provided that response appeared in support at the hearing.
- [31] The Board notes that the Development Officer, in his report, proposed a solution for the extension to make it compliant. The Appellant declined that solution at the time but now are satisfied with the imposed conditions.
- [32] Based on the above, it is the opinion of the Board 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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Ms. D. Kronewitt Martin; Ms. S. McCartney; Mr. L. Pratt

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Folkman / Mr. Wen

Important Information for the Applicant/Appellant

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 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
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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.
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Date: December 20, 2018
Project Number: 168694015-002
File Number: SDAB-D-18-205

Notice of Decision

- [1] On December 6, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 13, 2018**. The appeal concerned the decision of the Development Authority, issued on October 23, 2018, to refuse the following development:

Operate Temporary Storage Use (Gravel Truck Storage).

- [2] The subject property is on Plan 138KS Lot 18, located at 603 - 67 Avenue NW, within the (DC1) Direct Development Control Provision (Bylaw 15767). The Maple Ridge Industrial Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer’s written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Tabulations showing the amount of repairs off site;
 - Exhibit B – Photographs of the subject site;
 - Exhibit C – An e-mail to EPCOR;
 - Exhibit D – A written submission from the Appellant;
 - Exhibits E1 to E6 – Invoices and repair work done by third parties.

Preliminary Matters

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

- [6] The Chair 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, Mr. L. Dhaliwal, who was accompanied by Mr. P. Shanker

- [8] They applied for a development permit in 2015 and it was refused in October 2018 because their development was deemed to be a General Industrial Use.
- [9] The subject trucks are stored on site when they are not working.
- [10] Access from 65 Avenue to the subject site has been closed off and is not being used. The access area has been closed off using fencing material. They intend to make a cement wall using cement blocks.
- [11] Only minor repairs such as inflating tires, tightening loose screws, and replacing light bulbs are done to the trucks at the subject site. Major repairs are done off site at a repair shop.
- [12] They applied for a trucking business permit in 2015 but the business has not been operating due to the economy. They are willing to comply with the *Edmonton Zoning Bylaw*; however, the property is used as a residential property and parking of the trucks when they are not being used.
- [13] They referred to invoices from other companies showing the list of work that was done on the trucks (*Exhibits A and E1-E6*).
- [14] They referred to photographs showing the following (*Exhibit B*):
- a. The closed access area from 65 Avenue;
 - b. The yard where the trucks are parked when they are not operating;
 - c. The residence, the back yard, and the side yard along the shed;
 - d. The back yard looking south from the north access where a maximum of 17 trucks could be parked there.
 - e. The back yard showing the fence separating the adjacent property; and
 - f. Cement blocks that they intend to use to finish off the access to the subject site.

- [15] They confirmed there is one residence and one shed on the subject site. The shed existed when they purchased the property.
- [16] An RV is parked in the shed when it is not being used. A compressor, some parts, and small tools used for the trucks are also stored in the shed.
- [17] The shed is not being used for major repairs on the trucks. If repairs are being done on the property, they would not have invoices from companies where repairs were done.
- [18] The trucks are contracted out and haul gravel from one site to another.
- [19] Mr. Dhaliwal and Mr. Shanker provided the following information in response to questions by the Board:
- a. Fuel for the trucks is not stored at the subject site.
 - b. Mr. Dhaliwal's son owns the AB Weeping Tile business that has been operating from the subject site for approximately six months. Some of the material used for the tile business is stored at the subject site. The tile business is not associated with the trucking business.
 - c. The tile business is registered to the subject site. However, they are looking for space elsewhere for the tile business.
 - d. They have not pursued the Minor Home Based Business that was applied for in 2014.
 - e. They intend to use the subject site for the business and the storage of trucks.
 - f. In their opinion, Temporary Storage means trucks moving on and off the property.
 - g. All of the trucks are owned by the trucking company.
 - h. Mr. Dhaliwal lives at the subject Site.
 - i. A small amount of gravel is stored at the subject site.
 - j. A front end loader is stored at the subject site and used to load gravel in the trucks.
 - k. The complaints outlined in the Development Officer's written submission have been addressed.
 - l. They do not have any welding equipment at the subject site.
 - m. The trucks are empty when they are stored at the subject site.

ii) *Position of the Development Officer, Ms. R. Lee*

[20] The Development Authority did not appear at the hearing and the Board relied on Ms. Lee's written submission.

Decision

[21] 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 **CONDITIONS**.

Reasons for Decision

[22] The subject site is within the DC1 (Bylaw 15767) Direct Development Control Provision [the "DC1"] and within the Maple Ridge Industrial Area Structure Plan.

[23] The Board's jurisdiction is set out under section 685(4)(b) of the *Municipal Government Act* that states:

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

[24] As a result of section 685(4)(b) the Board has no jurisdiction to overturn the Development Authority's decision unless they failed to follow the directions of council in reaching its decision.

[25] The DC1 lists a series of uses including Temporary Storage pursuant to section 3.g. Temporary Storage is defined under the *Edmonton Zoning Bylaw* as:

development used exclusively for temporary outdoor storage of goods and materials where such storage of goods and materials does not involve the erection of permanent structures or the material alteration of the existing state of the land. Typical Uses include pipe yards, or vehicle or heavy equipment storage compounds.

[26] The Development Officer submitted a written document for this appeal in addition to the notations listed in the Development Permit refusal. This written document indicated that the Development Officer did not attend the hearing.

- [27] From the materials provided, it appears the Development Officer had information from a 2015 community consultation feedback summary in conjunction with the community consultation requirement under section 4.1.iii of the DC1. Responses from the community consultation and a City of Edmonton site visit in October 18, 2016 led the Development Officer to conclude that one of the permanent buildings on the subject site was being used in a material way in conjunction with the trucks that are the subject of this application.
- [28] In particular, the evidence from 2015 and 2016 showed that oil changes, welding and other acts of maintenance and repair were being conducted in one of the permanent buildings. As a result of those findings the Development Officer determined that this use was not Temporary Storage but in fact a General Industrial Use, which is not a listed use unless the subject site is *serviced to City of Edmonton standards for roads and sewers and which shall have a service connection for potable water*, pursuant to section 3.q of the DC1. As this servicing is not in place for the subject site, the Development Permit was refused.
- [29] The Board heard evidence at the hearing from the Appellant that was significantly different from the Development Officer's written materials. Both oral and documentary evidence was provided that showed repairs and significant maintenance and repairs including oil changes are no longer being conducted on the site. The Appellant testified and submitted evidence of invoices and tabulations showing that repairs and maintenance on trucks were being done by third party repair shops off site.
- [30] The Appellant testified that the only activity related to maintenance involved inflating tires of stored vehicles, tightening loose screws and occasionally light bulb replacements.
- [31] As the evidence provided by the Development Officer is close to being three years old, on a balance of probabilities the Board concludes that the essence of the subject development is in fact to store empty tractor trailers on the site and not perform any material maintenance or repairs. This conclusion leads the Board to find that the subject development is for Temporary Storage which is a listed use in the DC1. Therefore, the Development Officer did not follow the directions of council by not allowing a Temporary Storage use in the DC1.
- [32] To ensure that the issues observed and documented in 2015 and 2016 do not reappear, the Board has added **CONDITIONS** to this approval to ensure that is the case, which include:
- a. All major maintenance and repair of trucks shall not be conducted on the subject site.
 - b. The entrance to the subject site that was created onto 65 Avenue shall be removed and repaired to the satisfaction of Subdivision Planning (Transportation Services).

- c. All trucks shall be empty when stored on the subject site.
- d. No gravel shall be hauled or stored on the subject site other than what is required for the maintenance of the Temporary Storage facility.

[33] The following **CONDITIONS** are also added that were included in the Development Officer's written submission:

- e. No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard. (Reference DC1 (Bylaw 15767 Section 4.e)).
- f. 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 DC1 (Bylaw 15767 Section 4 i)).
- g. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1(1)(c)).
- h. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

Advisements

- a. Access from the site to 67 Avenue exists, as shown on Enclosure I. Any modification to the existing access requires the review and approval of Transportation Planning and Engineering.
- b. This lot falls within the Maple Ridge and Southeast Industrial Arterial Roadway Assessment (ARA) catchment area. 100% of the ARA is owed for this site. The amount of ARA owing using the 2016 rate totals \$108,271. However, the full amount owing will be deferred for this application. Upon future development or subdivision of the site, the deferred amount being imposed will be collected. The owner must contact Raghda Abdelmonem (780-442-7042) of Development Coordination for more information on the ARA owing.
- c. All access locations and curb crossings shall have the approval of Transportation Services (Reference Section 53(1)).

- d. Upon future development of the site, the existing accesses may require upgrading to meet current City of Edmonton standards which may include reconstruction, widening and hard surfacing. All costs associated with the upgrades shall be borne by the owner/applicant.
- e. The Maple Ridge and Southeast Industrial ARA catchment is set up as a means for cost sharing the arterial roadway construction within the Maple Ridge and Southeast Industrial Area. For further information regarding Arterial Roadway Assessments, please contact Raghda Abdelmonem (780-442-7042) of Development Coordination.
- f. The roadways (65 Avenue, 67 Avenue) adjacent to the subject property are rural residential gravel roadways. The Maple Ridge Area Structure Plan (Enclosure II) identifies a future urban collector roadway connection through the Hurstwood area along the existing 8 Street roadway alignment. This future urban collector roadway connection through the Hurstwood area depends upon future development in the area and timing is unknown.
- g. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
- h. Signs require separate Development Applications.
- i. The Development Permit shall not be valid unless and until the conditions of approval, except 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 (Section 17.1).
- j. 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 (780-442-5311) for further information.
- k. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

[34] With the application of the additional conditions by the Board, the Board is satisfied that the proposed development is a Temporary Storage use in the DC1. The appeal is therefore allowed.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Ms. D. Kronewitt Martin; Ms. S. McCartney; Mr. L. Pratt

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. R. Lee / Mr. H. Luke

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.