EDMONTON
TRIBUNALS
Subdivision & Development Appeal Board

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Date: April 25, 2019
Project Number: 091238443-004
File Number: SDAB-D-19-049

Notice of Decision

[1] On April 10, 2019, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on March 15, 2019. The appeal concerned the decision of the Development Authority, issued on February 25, 2019 to refuse the following development:

> **To change the Use of a Single Detached House to a Professional, Financial, and Office Support Service and to construct exterior alterations (Revise the approved Parking Layout)**

[2] The subject property is on Plan NB Blk 10 Lot 82, located at 9724 - 110 Street NW, within the RA9 High Rise Apartment Zone. The Oliver Area Redevelopment 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 addendum;
- The Appellant's written submissions;
- A written submission including photographs from an affected property owner; and
- One Online response in opposition to the proposed development.

Preliminary Matters

[4] At the outset of the appeal hearing, Mr. Buyze disclosed that Mr. S. Gill is an acquaintance but that will not affect his ability to provide a fair and impartial hearing. 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 (the "*Municipal Government Act*").

Summary of Hearing

i) Position of the Development Officer, Mr. P. Adams:

[7] A development permit to convert a Single Detached House to a Professional, Financial and Office Support Service was approved in March 2010 and the decision was upheld upon appeal by the Subdivision and Development Appeal Board.

[8] This approval was subject to the development regulations contained in the *Edmonton Zoning Bylaw* that were in effect in 2009 and this conversion was listed as a Discretionary Use in the RA9 Zone. However, this is no longer the case in the current *Edmonton Zoning Bylaw* and subsequently the building permit was cancelled which also resulted in the cancellation of the development permit, pursuant to Section 22(4)(a)(ii) of the current *Edmonton Zoning Bylaw 12800.*

[9] The Applicant then applied for a development permit to expand the parking area from 8 to 12 parking spaces and it was determined that this would also require a change of Use from a non-conforming Single Detached House to a Professional, Financial and Office Support Service that was approved on the development permit that was cancelled.

[10] A Professional, Financial and Office Support Service is a Permitted Use in the RA9 High Rise Apartment Zone but there are strict limitations regarding the location of this Use. Section 230.7(1)(a) states that Non-residential Uses, excluding Residential-Related Uses, shall only be developed in conjunction with Apartment Housing or Group Homes and as the proposed development does not comply with that requirement and it was refused.

[11] Mr. Adams provided the following information in response to questions from the Board:

a) Because the previous development permit was cancelled, the use of this site will revert back to Single Detached Housing if this development permit application is not approved by the Board.

b) The Professional, Financial and Office Support Service Use is not currently operating from this location.

c) Part 10.5.1.2 of the Oliver Area Redevelopment Plan states that "Commercial conversions of older housing stock is encouraged, where such housing is isolated on one or two lots between apartment buildings or non-residential uses". However, this house is not isolated between two lots of apartment building or non-residential Uses because there is a Single Detached House on the lot to the north. Therefore, in his opinion, this development does not meet the requirements of the Oliver ARP.

d) Based on the information provided by the Applicant, the parking area at the rear of the site will provide accessory parking.

e) A Major Home Based Business would be allowed as a Discretionary Use if the Applicant was living in the house.

f) If the Board approves the development, the Professional, Financial and Office Support Service would be the only approved use on this site.

ii) Position of the Appellants, Mr. R. Gill and Mr. S. Gill, representing Terragold Projects Inc.:

[12] This property has been owned by their family for many years. They would like to convert the Single Detached House to be used as an administrative office for their business, similar to the dental office that is operating from the lot to the south.

[13] This Use was previously approved but did not proceed because of family circumstances which required the Appellant to be out of the country and an oversight led to the expiration of the building permit.

[14] This location is appropriate because there are many other similar businesses operating from Single Detached Houses in the neighbourhood and these businesses are supported by the Oliver Community League.

[15] It was acknowledged that the relationship with the neighbouring property owner is strained but their opposition was questioned because they are operating a dental office from the lot immediately to the south.

[16] They have discussed their plans with many of the neighbours who have signed a petition in support of the proposed development.

[17] It is their wish to co-exist with their neighbours in a respectful manner.

[18] The condition imposed by the Board when the original development permit was issued in March, 2010 to hardsurface the parking area was acknowledged. An existing garage was demolished in 2018 and the parking area was compacted and gravel was poured to address the concerns of their neighbour. Since then some of the sunken areas have been refilled and it is their intention to lay asphalt in the parking area. It was noted that the parking area at the rear of the dental office next door has been hardsurfaced with gravel not asphalt.

[19] Because of the slope of the land snow melt results in water naturally draining south towards the river.

[20] The use of the parking area for non-accessory parking is a Bylaw Enforcement issue.

[21] They do have an adverse relationship with the neighbours and have felt some level of pressure and bullying in the past. They own both of the adjoining properties and operate a dental clinic on one of the lots and reside in a house on the other lot. The dental clinic has nine parking spaces located at the rear of the site in an area that is not hardsurfaced with asphalt.

[22] It was his opinion that the constant complaints and pressure may be an attempt by his neighbour to force him to sell their lot so that they can consolidate all three lots.

[23] Mr. R. Gill and Mr. S. Gill provided the following information in response to questions from the Board:

a) It was acknowledged that the proposed Use is no longer permitted at this location because of the changes that were made to the *Edmonton Zoning Bylaw*. However, they estimate there are approximately 70 to 80 businesses being operated out of converted Single Detached Houses in the Oliver neighbourhood and this is supported by the Community League.

b) Their only other option to be able to operate as a business office on the site is to demolish the existing house and build an Apartment House or Group Home that would include an office as permitted under the current Bylaw. Their preference is to preserve the existing Single Detached House.

c) The proposed operation of their business from this house will be characteristic of other businesses operating from converted houses in this neighbourhood and will preserve the character of the street.

d) They want to co-exist with their neighbours and are willing to work with them to ensure an amicable relationship.

e) Mr. Gill, his Architect and Interior Designer will consolidate their services at this location.

f) The exterior appearance of the existing house will not be changed.

g) The house has been used as a residential rental property since 2010.

iii) Position of Affected Property Owners in Opposition to the Appellant, Mr. M. Szyling:

[24] They did not object to the conversion of this house into a Professional, Financial and Office Support Service Use 11 years ago and are still not opposed to it. However, their concern was and still is the hardsurfacing of the parking area, the piling of snow between the two properties and water draining onto their lot to the south.

[25] The Appellant has been using the onsite parking as a non-accessory parking lot since mid-2008. It started with 8 parking spaces and there are now currently 15 parking spaces (including one stall designated for the residential tenant). Photographs were referenced to illustrate the state of the existing parking lot, the grading and snow piling. It was his opinion that the parking lot is not ready for paving.

[26] The Subdivision and Development Appeal Board approved the development of their dental office and residence and their properties have been developed in accordance with that decision.

[27] It is not their intention to purchase the subject site and in fact they were approached with an offer to purchase their properties in February, 2019.

[28] If it is the decision of the Board to overturn the refusal, conditions to grade and hard surface the parking lot and build a retaining wall to address the drainage problems should be imposed.

[29] He is not opposed to the operation of a business from this location but does not support the operation of a non-accessory parking lot as illustrated in several photographs that have been submitted. Only one of the vehicles parked on the site belongs to the person currently renting the property.

[30] It was his opinion that because the previous conditions were not met, the owner should be required to post a performance bond until the parking lot is developed in accordance with City standards.

[31] The recommended condition of the Development Officer that the parking lot be hardsurfaced is acceptable to him as long as it is constructed properly to avoid drainage issues and is not permitted to provide non-accessory parking.

[32] He has recently witnessed as many as 16 vehicles parked on the site.

iv) Rebuttal of the Appellant:

[33] Every attempt will be made to alleviate drainage and run off problems onto the adjacent site and they are prepared to comply with all of the recommended conditions provided by the Development Officer.

[34] It was conceded that the parking area has been used to provide parking for other business owners in the area and that there was a charge to park on the site.

[35] Twelve parking spaces have been approved for the site. Three will be required by himself, his Architect and Interior Designer. Six spaces will be available for their customers. He has no intention of allowing any of the approved spaces to be used as paid parking spaces.

[36] It is his intention to operate a paperless office and therefore a loading space is not required.

[37] A service company has been hired to clean up the site and the front yard will be professionally landscaped.

Decision

[38] The appeal is **ALLOWED** and the decision of the Development Authority **REVOKED**. The development is approved as applied for to the Development Authority. The development is **GRANTED**, subject to the following **CONDITIONS** as proposed by the Development Authority and reviewed by the Appellant:

1. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way.

2. 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);

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);

4. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6;

5. All access locations and curb crossings shall have the approval of Transportation Planning. (Reference Section 53(1)).

6. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of $236.00.

7. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Development Permit Inspection Fee of $518.00. This can be paid by phone with a credit card (780) 442-5054.

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

1. Section 230.7(1)(a), which states Non-residential Uses, excluding Residential-Related Uses, shall only be developed in conjunction with Apartment Housing or Group Homes, is waived.

2. Section 230.7(1)(b), which states the combined Floor Area shall not exceed 32 percent of the overall Floor Area for the Site, and shall not exceed 47 percent of the Floor Area that is developed as Apartment Housing, Lodging Houses or Group Homes, is waived.

3. Section 230.7(10), which states Professional, Financial and Office Support Services shall be limited to 15 percent of total Floor Area for the Site, is waived.

4. Section 230.5(1)(h), which states for non-residential Uses, excluding residential-related Uses, on ground level, the ground Storey shall have a minimum Height of 4.0 metres, is waived.

5. The minimum required one Loading Space as per section 54.4, Schedule 3(2) is varied to allow a deficiency of one, thereby decreasing the minimum allowed to 0 Loading Spaces.

Reasons for Decision

[40] The subject property is located in the Oliver neighbourhood in the (RA9) High Rise Apartment Zone.

[41] The proposed change of Use satisfies Section 230.2(9) of the *Edmonton Zoning* Bylaw which lists Professional, Financial and Office Support Services as a Permitted Use in the (RA9) High Rise Apartment Zone.

[42] The location of the subject property is identified in the Oliver Area Redevelopment Plan as Sub Area 6, an area described as primarily residential and containing one of the largest concentrations of older housing stock in the city. The Oliver ARP notes a need to examine approaches which will encourage the continuing use of the existing structures which represent an important piece of Edmonton history.

[43] The proposed change of Use of this Single Detached House meets the stated aim of the Oliver ARP for this section of the Oliver neighbourhood to encourage continuing use of existing structures.

[44] The evidence presented by the Appellant shows a significant number of the remaining Single Detached Houses in the Oliver neighbourhood are being used for similar commercial purposes. Notably, the Single Detached House on the abutting property to

the south is a dental office. As such, the Board finds that the proposed Use for this Single Detached House is not uncharacteristic of the neighbourhood.

[45] The February 14, 2019 memorandum from Urban Form and Corporate Strategic Development in respect of the proposed change of Use indicated access from the site to the adjacent north south alley was acceptable. The only condition identified was that garbage enclosures must be located entirely on private property.

[46] There are no parking concerns associated with the change of Use and no variance required.

[47] The Appellant's neighbour does not object to the change of Use of the Single Detached House to a Professional, Financial, and Office Support Service.

[48] The petition submitted by the Appellant shows that the proposed change of Use is supported by a number of neighbours. There is no evidence before the Board of objection to the change of Use.

[49] The Board acknowledges the concerns voiced by the Appellant's neighbour but is satisfied that these concerns are addressed in the conditions appended to the approval.

[50] 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.

Ms. G. Harris, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. C. Buyze, Mr. R. Hachigian, Ms. D. Kronewitt-Martin, Mr. A. Peterson

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: April 25, 2019
Project Number: 301692417-001
File Number: SDAB-S-19-001

Notice of Decision

[1] On April 10, 2019, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **March 18, 2019**. The appeal concerned the decision of the Subdivision Authority, issued on February 28, 2019 to refuse the following subdivision:

To create one additional Single Detached Residential Lot.

[2] The subject property is on Plan 6045HW Blk 13 Lot 45, located at 9411 - 65 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay 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 refused Subdivision application and tentative plan;
- The Subdivision Authority's written submission, including a PowerPoint presentation and a revised tentative plan dated April 4, 2019; and
- A Plan illustrating the possible building footprint submitted by the Appellant.

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 678 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. D. Locken, representing 1014891 Alberta Ltd.:

[7] The subject site is a pie shaped lot that has a depth of 146 feet. The wide rear yard will provide ample room for the development of double detached garages and provide extra parking at the rear.

[8] Most of the houses on block have large front setbacks.

[9] The existing house is setback approximately 8.8 metres and lines up with other houses on the block. The site area of both lots will easily accommodate the construction of two single detached houses.

[10] Mr. Locken provided the following information in response to questions from the Board:

a) The adjacent house to the east has a larger front setback compared to the other houses on the block. Houses that are developed on the subdivided lots can be set back further and still comply with development regulations.

b) He did not discuss the proposed subdivision with any of the neighbours. The property owner to the east no longer resides at the house and there is an older multi density row housing project across the street which in the future may be redeveloped into a Seniors complex.

ii) Position of the Subdivision Authority, represented by Mr. C. Schmidt and Ms. K. Rutherford:

[11] The site of the proposed subdivision is an irregular pie shaped lot located midblock in the mature neighbourhood of Hazeldean.

[12] The development regulations of the Mature Neighbourhood Overlay apply to the subject site.

[13] An aerial photograph was referenced to illustrate that the existing house on the lot faces 65 Avenue and there is a detached garage located at the rear of the site adjacent to the lane. The block is comprised of single detached houses and there is a town house located north of the site.

[14] The subdivision application is to create one additional single detached residential lot to accommodate the construction of new single detached houses on each lot. The existing house and detached garage will be demolished.

[15] Single Detached Housing is a permitted use in the RF1 Single Detached Residential Zone.

[16] The application was refused because the proposed subdivision does not comply with the minimum Site Width of 7.5 metres identified in section 110.4(1)(b) of *the Edmonton Zoning Bylaw.*

[17] The Site Width of each proposed lot is 6.76 metres as measured 3.0 metres from the front property line in accordance with section 110.4(8)(a) and is therefore, deficient by 0.74 metres.

[18] If there was not a Treed Landscaped Boulevard and the Site Width was measured at 4.5 metres from the front property line, each lot would still be deficient with a Site Width of 6.94 metres.

[19] The deficient Site Width will create two non-conforming lots and would result in unnecessary hardship for existing and future landowners. Landowners wishing to further develop these lots will require variances to the development regulations, which leads to uncertainty and potential development appeals to the Subdivision and Development Appeal Board.

[20] Seven neighbours were notified of the proposed subdivision. There were no written responses received and there was one telephone response from a neighbour who expressed a concern regarding the resulting front and side setbacks.

[21] Mr. Schmidt and Ms. Rutherford provided the following information in response to questions from the Board:

a) The possible deficiency in the minimum required front setback of the Mature Neighbourhood Overlay could result in sight line concerns and has the potential to set a precedent for future subdivisions in this neighbourhood. However, the Subdivision Authority does not consider the development regulations contained in the Mature Neighbourhood Overlay when reviewing an application for a subdivision.

b) The analysis of a subdivision application does not consider the existing housing stock and Mr. Schmidt could not comment on the state of redevelopment in this neighbourhood.

c) A map was referenced to illustrate that the lots in this neighbourhood are all of a similar depth while there are varying site widths. It was acknowledged that some lots located west of the subject lot appear to have already been subdivided.

iii) Rebuttal of the Appellant:

[22] It has been Mr. Locken's experience that redevelopments in older neighbourhoods often require variances because the development regulations are constantly being amended.

[23] The existing house on the subject site is the worst house he has encountered in the neighbourhood and it will be demolished in the near future.

[24] A Semi-detached House could be developed on this lot but it is his preference to subdivide the lot and construct two Single Detached Houses.

[25] He is prepared to comply with the recommended conditions provided by the Subdivision Authority.

Decision

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

1. that the owner enter into a Servicing Agreement with the City of Edmonton for the payment of the applicable Permanent Area Contributions, pursuant to Section 655 of the Municipal Government Act (contact Development.Coordination@edmonton.ca);

2. that the owner obtain a permit to demolish the existing dwelling and garage prior to endorsement of the final plan. Demolition permits can be obtained from Development Services located on the 2nd floor of Edmonton Tower at 10111 - 104 Avenue NW;

3. that the final plan of survey shall conform to the attached revised tentative plan;

4. that the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

[27] In granting the subdivision, the following variance to the *Edmonton Zoning Bylaw* (the *Bylaw*) is allowed:

1. The minimum required Site Width of 7.5 metres for each Lot, as per section 110.4(1)(b) is varied to allow a deficiency of 0.74 metres, thereby reducing the minimum required Site Width to 6.76 metres.

Reasons for Decision

[28] The Appellant applied for a subdivision to create one additional Single Detached Residential Lot by splitting a current Site into two Lots, each 6.76 metres in Site Width.

[29] The Subdivision Authority refused the application because it will result in a Site Width of 6.76 metres for each of the Lots which does not comply with the minimum 7.5 metres

required Site Width for the (RF1) Single Detached Residential Zone under section 110.4(1)(b) of the *Bylaw.*

[30] The Subdivision Authority declined to approve the subdivision application as approval of this subdivision would create an unnecessary hardship or practical difficulty pursuant to section 11.4(1)(c) of the *Bylaw* which expressly limits the Development Authority's variance authority concerning Site Width. Section 11.4(1)(c) states:

> on rectangular shaped Lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1, RF2, RF3, and RF4 Zones for all Sites which received subdivision approval after June 12, 2017.

[31] The Board concurs that section 11.4(1)(c) limits the Development Authority's discretion to grant variances for specific Development Permit Applications. However, the Subdivision Authority and this Board have a different authority. This Board is not obligated to refuse an application for subdivision on this basis.

[32] The Board's jurisdiction in this appeal comes from section 680(2) of the *Municipal Government Act* (the *Act*) which outlines its responsibilities and authority in appeals of refused subdivision applications. It provides:

> (2) In determining an appeal, the board hearing the appeal
>
> (a) must act in accordance with any applicable ALSA regional plan;
>
> (a.1) must have regard to any statutory plan;
>
> (b) must conform with the uses of land referred to in a land use bylaw;
>
> (c) must be consistent with the land use policies;
>
> (d) must have regard to but is not bound by the subdivision and development regulations;
>
> (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
>
> (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

[33] Per section 680(2)(f), the Board is delegated the same authority that the Subdivision Authority had when making the original decision. This authority is found in section 654 of the *Act* which provides in part:

> (2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

> (a) the proposed subdivision would not
>
> (i) unduly interfere with the amenities of the neighbourhood, or
>
> (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
>
> and
>
> (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

[34] It was accepted by all parties that the proposed subdivision conforms with the Uses for land prescribed in sections 110.2 and 110.3 of the *Bylaw*. However, the Lots created by the proposed subdivision will make it impossible to comply with the specific development regulation of the *Bylaw* regarding minimum Site Width found in section 110.4(1)(b).

[35] The Board's concern with the Subdivision Authority's decision is in part a question of the *de minimis* nature of the deficiency. Each Lot would be deficient by 0.74 metres. As set out in section 654(2)(a) of the *Act*, that regulation need not bind this Board if the Board finds that granting a variance to that regulation will not unduly interfere with neighbourhood amenities, nor create a material adverse interference or material impact on the use, enjoyment or value of neighbouring properties.

[36] The Board grants the variance for the following reasons:

a) The Board was not provided with any evidence that granting a variance of 0.74 metres would be detectible by anyone either living in the neighbourhood or driving through the neighbourhood.

b) The Board was not provided with evidence from which it could conclude that a variance this small would create a **material** impact on neighbouring properties or would **unduly** interfere with the amenities of the neighbourhood. The Board finds that the variance will not create any material impact or undue interference.

c) The Subdivision Authority notified seven adjacent property owners and only received one telephone response from a neighbour who expressed a concern regarding the front and side setbacks. None of the neighbours responded to the notice sent by the Board regarding the appeal hearing and no one attended in opposition to the proposed subdivision.

d) The Board observes that the subject Site abuts a large RF5 Row Housing Zone which permits a significantly higher density of development than is proposed in this subdivision application. The Board also notes that the increased density in this RF1 Zone resulting from the proposed subdivision is equivalent to the increase that would result from developing a Semi-detached House on this Site.

[37] For these reasons, the Board grants the variance and allows the appeal.

Ms. G. Harris, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. C. Buyze, Mr. R. Hachigian, Ms. D. Kronewitt-Martin, Mr. A. Peterson

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.

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Date: April 25, 2019
Project Number: 303461903-001
File Number: SDAB-D-19-050

Notice of Decision

[1] On April 10, 2019, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **March 19, 2019**. The appeal concerned the decision of the Development Authority, issued March 1, 2019 to refuse the following development:

> **To change the Use from Health Services to Major Alcohol Sales, and to construct interior alterations. (Wine and Beyond).**

[2] The subject property is on Plan 1425753 Blk 21 Lot 2, located at 11904 - 104 Avenue NW, within the DC1 Direct Development Control Provision (Bylaw 18099 – Area 1) and within the 104 Avenue Corridor Area Redevelopment Plan.

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

- A copy of the refused Development Permit and proposed plans;
- The Development Officer's written submission;
- Written submissions from Legal Counsel for the Appellant; and
- One online response in support of the proposed development.

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

- Exhibit A – Letter from Alcanna Inc. regarding the imposition of a condition submitted by Legal Counsel for the Appellant; and a letter from First Capital Asset Management ULC; and
- Exhibit B – An excerpt of a decision of the Supreme Court of Canada, *Her Majesty the Queen, Appellant v. Jeromie Keith D. Proulx, Respondent and The Attorney General of Canada and the Attorney General for Ontario, Intervenors.*

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 Mr. J. Murphy, Q.C., Legal Counsel representing the Appellants (Associated Engineering Alberta Ltd., represented by Mr. M. Figueira; Mr. D. Hennessey, representing the landlord; and Alcanna Inc., represented by Mr. S. Wood):

[8] This development permit application is for a site that is zoned (DC1) Direct Development Control Provision. Previous SDAB decisions as well as information provided to the public regarding appeals in Direct Control Zones contain a statement regarding the provisions of section 685(4) of the *Municipal Government Act*.

[9] An appeal hearing for a proposed development located in a DC Zone generally begins with the Presiding Officer advising the Appellant that they are required to advise the Board how the Development Officer failed to follow the directions of Council when making their decision.

[10] The legal profession has bought into this approach and have spent hours arguing as to how the directions of Council are really broad and include all of the provisions provided in section 11 of the *Edmonton Zoning Bylaw* (the *Bylaw*), related to variance power and that the Board should take a broad view of the directions of Council. In Mr. Murphy's opinion, this approach is wrong.

[11] A copy of an information sheet provided by SDAB administration, entitled "Appeals In Direct Control (DC) Zones" was referenced. It includes the statement that "The initial question the SDAB has to address is whether, in approving or refusing the application, the Development Officer did or did not follow the directions of City Council as set out in the Direct Control provision and the land use/zoning bylaw of which it is a part."

[12] It was his opinion that this is an incorrect statement of law. This statement as adopted by the Board is wrong in law because it conflates two very distinct elements of land use regulations that are recognized in the *Municipal Government Act*.

[13] Land use regulations that are contained in the Direct Control Provision are beyond the Board's ability to vary because Council has set those in stone. They can only be relaxed in accordance with the additional instructions, if any, that Council provides in the DC

Zone. On the other hand, land use regulations appearing outside of the DC Provision remain subject to the variance power of the Board, under section 687(3)(d) of the *Municipal Government Act* and that is so because they are separate and distinct from the Direct Control Provision itself.

[14] The confusion results because of the reference in the *Bylaw* to the fact that the general regulations of the *Bylaw* apply to Direct Control Districts and they do. They apply to every Zone, every District and every development in the City but they are not part of the Zones and they are not part of the Direct Control District. Most importantly, they are not part of the direction of Council unless Council specifically restates them in the DC1 Direct Development Control Provision.

[15] Section 685(4) of the *Municipal Government Act* refers only to decisions with respect to development permit applications in a Direct Control District. Section 685(4) does not suggest that the directions of Council are to be sought anywhere but in the Direct Control District itself. Specifically, section 685(4) does not say that you can seek the direction of Council in those parts of the *Bylaw* other than in the Direct Control District in question.

[16] This development permit application was refused because the Development Officer determined that it does not comply with the requirements of section 85 of the *Bylaw*.

[17] An aerial photograph was referenced to illustrate the location of the Brewery District and the Oliver Square Shopping Centre within the Direct Control District. There is an existing Liquor Depot store located in Oliver Square Shopping Centre. The owners want to move this Major Alcohol Sales Use from the Oliver Square location to the subject site in the Brewery District. The existing Liquor Depot location will be closed if the proposed Wine and Beyond store is approved on the subject site in the Brewery District. As the distance between the existing Liquor Depot store and the subject site is 50 metres it does not meet the minimum required separation distance.

[18] There is another existing liquor store on 123 Street approximately 438 metres away from the subject site. It does not comply with the minimum required 500 metres separation distance. However, this deficiency was not identified by the Development Officer.

[19] There are some problems with respect to the subject site in addition to those referenced by the Development Officer, pursuant to section 85. Not only is the subject site too close to the existing liquor store, it is also too close to the park located across 104 Avenue.

[20] It does not seem reasonable that the City would have gone to all of the trouble to create the 104 Avenue Corridor Area Redevelopment Plan, to rezone all of this land and to make Alcohol Sales and several other Uses, Permitted Uses in the Zone in the face of these problems. The existence of the park located across 104 Avenue should have sent up a warning flag if section 85 was to be included in the Direct Control Provision. Leaving aside the directions of Council and 685(4) and whether or not the Board has the authority to deal with this matter, Mr. Murphy submitted that the required variances for the proposed development would be granted in any other situation.

[21] The DC1 was referenced to illustrate how large the rezoning is for this area. Area 1 of the DC1 covers the Brewery District and Oliver Square. The Brewery District land was originally zoned CB2. All of the CB2 Uses were incorporated into an overarching plan because Council wanted to create a transit oriented development that was pedestrian friendly and could serve the needs of the housing components that are part of this plan. This area is intended to become two things, a destination and to provide services to the residents in this area.

[22] The General Purpose of the DC1 is to "facilitate the development of a pedestrian friendly and transit-supportive area that is characterized by its strong mix of retail, office, entertainment, and residential uses and its accessibility, open spaces, and sensitive interface between developments". The listed Uses in this DC1 reflect the purpose.

[23] In any other situation he would be appearing before the Board to support the required variances and reminding the Board that the only test is whether the required variances materially impact the use and enjoyment of neighbouring properties or negatively impact the amenities of the neighbourhood.

[24] In this case there has been an Alcohol Sales development here for several years, only 50 metres away from the new site so there could be no possible impact on the neighbourhood. Second, the subject site is separated from the park by 104 Avenue and the entire parking area of the shopping centre. The existing Alcohol Sales has been operating for many years without any known complaint.

[25] He suggested the Board impose a condition on the development permit for the new Alcohol Sales (Wine and Beyond) that the old Alcohol Sales (Liquor Depot) has to be shut down when the proposed new store opens for business. A condition should also be imposed that says the owners will not reopen a liquor store on the current site without a new development permit. A letter signed by both landlords and the tenant was submitted in agreement with the suggested conditions and marked *Exhibit A*.

[26] Section 641(1) of the *Municipal Government Act* states that:

> The council of a municipality that has adopted a municipal development plan, if it wishes to exercise **particular** control over the use and development of **land** or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

[27] This is very specific wording that departs from the general rules of zoning where a Zone is created with Permitted and Discretionary Uses and development regulations unless there are general regulations contained in the *Bylaw*.

[28] Section 641(3) states that:

> In respect of a direct control district, the council may decide on a development permit application or may delegate the decision to a development authority with directions that it considers appropriate.

[29] Council can delegate the Development Authority to make the decision with directions that Council considers appropriate. Giving of the direction is concurrent with the approval of the DC Zone. The directions are contained in the Direct Control District and each Direct Control District is unique.

[30] The elusive directions of Council that everyone is always looking for do not exist. There are only two places in the *Municipal Government Act* that this notion of the directions of Council are contained, specifically section 641(3) and section 685(4). Section 685(4) is the section that puts the Appellants on the spot to explain to the Board how the Development Officer did not follow the direction of Council. However, the directions of Council are outlined in section 641(3). This section says the directions of Council are the directions given to the Development Authority on the creation of the Direct Control District.

[31] There is only one set of directions from Council and there can only be one set of directions from Council because the language in section 685(4) uses the same language as the language that allows Council to create a Direct Control District. When trying to determine the directions of Council, that direction is only contained in the Direct Control District.

[32] Section 685(4) states that despite your right to appeal "if a decision with respect to a development permit application in respect of a direct control district" is made by a Development Authority then the jurisdiction is limited to whether the directions of Council were followed.

[33] This section reflects the argument that was provided earlier in this hearing. If these directions from Council appear in a Direct Control Provision, section 685(4) applies. However, this appeal is not in respect to the Direct Control Provision, it is in respect to lands that are zoned Direct Control but the problem is not the directions of Council, it is the development regulations contained in section 85 of the *Bylaw*.

[34] The drafters of the Planning Act in 1977 were attempting to cut off appeals of things that Council had already decided. If Council says in a Direct Control Provision that a front setback has to be 3.0 metres you cannot do anything to change that even through the application of section 11 of the *Bylaw.* Council sets the standards in a Direct Control Provision and has already anticipated all the variances that will be allowed. Section 685(4) states that and does not preclude appeals if a decision with respect to a development permit application is in respect of the remainder of the *Bylaw*. It only precludes appeals in respect to the Direct Control Provision.

[35] Section 641 says it has to be specific, apply to particular areas of land and come with instructions, being the direction of Council.

[36] Section 40 of the *Bylaw* states:

> The General Development Regulations shall apply to all developments on all Sites, and shall take precedence except where the regulations of a Zone, Overlay or Direct Control Provision specifically exclude or modify these provisions with respect to any Use.

[37] Section 69 of the *Bylaw* states that:

> The Special Land Use Provisions apply to the Uses listed in any Zone or Direct Control Provision in which they are located. They shall take precedence and be applied in addition to the requirements of the Zone, except where a Zone, Direct Control Provision or Overlay specifically excludes or modifies these provisions with respect to any Use.

[38] In order for these provisions to be applied in addition to the requirements of the Zone or Direct Control Provision, they cannot be part of the Zone. They have a separate identity and will be applied to the Zone in addition. The *Bylaw* when read consistently is saying that there is something different with these regulations of general application whether it is the general regulations or the special land use provisions. They apply in addition to what is contained in the underlying Zone or Direct Control Provision.

[39] Section 710 of the *Bylaw* has thrown all discussions with respect to Direct Control Provisions into a tail spin. This is the language that unless, read properly, drives the Board to determine that the variances of the *Bylaw* cannot be considered.

[40] Section 710.4(1) states:

> All developments shall comply with the development regulations contained in an approved Area Redevelopment Plan or Area Structure Plan.

[41] All Direct Control Provisions, unless historic sites, arise out of Area Redevelopment Plans or Area Structure Plans. The creation of this Direct Control Provision was the result of an amendment to the 104 Avenue Corridor Area Redevelopment Plan.

[42] Section 710.4(3)(b) states:

> A development may also be evaluated with respect to its compliance with the General Regulations and Special Land use Provisions of this Bylaw.

[43] The term '***may*** also be evaluated' in this section shows that the regulations of general application are different from the Direct Control. If these rules of general application were already part of the Direct Control District that would render this statement redundant.

[44] Section 710.5 states:

> All regulations in this Bylaw shall apply to development in the Direct Development Control Provision, unless such regulations are specifically excluded or modified in a Direct Development Control Provision.

[45] This section does not say that these regulations are part of the District; it says they shall apply in the District. That is the split between these two things.

[46] Several sample Direct Control Districts were referenced. It was noted that if any of the general or special regulations from the *Bylaw* are repeated in the Direct Control Provision, the instructions from Council, that makes them part of the instructions and they are locked in. Some Direct Control Bylaws lock in regulations from the *Bylaw* and some do not.

[47] DC2.343 lists Major and Minor Alcohol Sales as a Use and includes the regulation that Major and Minor Alcohol Sales shall be developed in accordance with section 98, now section 85 of the *Bylaw*. By including this language in the Direct Control Provision, Council has told the Development Officer that this Use shall be developed in accordance with the restrictions of the *Bylaw*.

[48] If an appeal was filed to allow a variance for a Major or Minor Alcohol Sales Use in this Direct Control Provision, the Board would not have authority to vary the provisions of the Direct Control Provision. When general regulations are repeated in a Direct Control Provision they become part of it but they do not become part of it unless and until they are repeated in the Direct Control Provision.

[49] Numerous other Direct Control Districts were reviewed to illustrate that some include development regulations but others do not.

[50] The Direct Control Provision that applies to this site lists Major and Minor Alcohol Sales as Uses but it does not incorporate the development regulations of section 85 into this Zone. The regulations still apply and can be reviewed outside the Direct Control Provision. However, it is not part of the Direct Control Provision, but rather a regulation of general application.

[51] There is a difference between rules generally running along side and rules coming in because when they come in it would be a redundancy to say they already apply but they have to apply. A document cannot be interpreted in that way.

[52] A decision of the Supreme Court of Canada, *Her Majesty the Queen, Appellant v. Jeromie Keith D. Proulx, Respondent and The Attorney General of Canada and the Attorney General for Ontario, Intervenors* was submitted and marked *Exhibit B*. The Court determined that it is a well-accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage.

[53] The Court of Appeal decision, *Parkdale-Cromdale Community League v. Edmonton (City)*, 2007 ABCA 309 determined that the mere listing of a series of permissible Uses does not specifically exclude the other provisions of the *Bylaw*. This properly recognizes that the Direct Control District and the remainder of the *Bylaw* are two separate creatures that run in tandem.

[54] In *McCann v Edmonton (City)*, 2017 ABCA 323, the Court acknowledged that the Development Officer properly granted a variance because the Direct Control Provision did not address parking or loading requirements. Therefore, those regulations ran alongside the Direct Control Provision and the Court found no problem with the Development Officer granting a variance. The general provisions of section 54 were not incorporated into the DC Bylaw.

[55] The latest statement on the law regarding DC provisions is found in *Garneau Community League v Edmonton (City)*, 2017 ABCA 374. The heart of the case is at Paragraph [36] which states that the Board should have read the directions of Council contained in the Direct Control Provision under the Garneau Area Redevelopment Plan that limits the variance powers. The appeal was sent back to the Board and the Board addressed the particular variance powers that were contained in the Garneau Area Redevelopment Plan. This decision does not address the argument made for this appeal.

[56] Extracts from Laux & Stewart-Palmer, *Planning Law and Practice in Alberta*, fourth edition were referenced. In Edmonton, the ability for the Development Officer to make decisions on Direct Control Districts does not happen upon the enactment of each Direct Control Bylaw. There is an en masse delegation that is provided in section 11 of the *Bylaw*. This means that delegation does not have to be repeated in each and every bylaw.

[57] It was Professor Laux's view that any time discretion is granted to the Development Officer there is the right of appeal. However, there is no appeal if the discretion is taken away and if it is taken away it will appear in the direction of Council which has to appear in the Direct Control District because it is a unique district. Section 641 states that is where the direction is provided.

[58] Mr. Murphy submitted that this case is important not only because of the proposed Alcohol Sales Use but because of the confusion surrounding Direct Control Districts. It is incomprehensible that Council would have developed the 104 Avenue Corridor Area Redevelopment Plan and all of the associated Direct Development Control Districts in the face of development that has existed in this neighbourhood for many years and not allow allowances for anything that already exists.

[59] If Council had stated in this DC1 that all development shall comply with section 85 there would be no right to appeal. However, in this case, the rules of general application run parallel to the Direct Control District but are not included in this DC1. The development regulations contained in section 85 stands alone and are not incorporated into the DC1.

[60] Mr. Murphy provided the following information in response to questions from the Board:

a) The development regulations contained in section 85 of the *Bylaw* absolutely apply to this development but they apply as general regulations and not as part of the DC1. The requirements of section 85 apply in tandem and run parallel to the Direct Development Control provisions.

b) This appeal is not related to the decision made by the Development Officer pursuant to the DC1. The appeal relates to the development regulations contained in section 85. The provisions of the DC1 and section 85 both apply to this development but they are two separate issues. There is no right of appeal if the DC1 had incorporated the development regulations contained in section 85.

c) Section 710.4(3)(b) states that "a development may also be evaluated with respect to its compliance with the General Regulations and Special Land Use Provisions of this Bylaw." If there was no difference between the Direct Control provisions and the general regulations why would section 710 state that all developments shall comply with the development regulations contained in an approved Area Redevelopment Plan or Area Structure Plan and then state that a development may also be evaluated with respect to other regulations. The General Regulations and Special Land Use Provisions apply to every Zone, including Direct Control Districts but they run parallel.

d) The General Regulations and Special Land Use Provisions apply in addition to the Direct Control provisions. In this case, how could Council say liquor stores are allowed when the site is located too close to a park. It is ridiculous to determine that this requirement could not be varied.

e) This appeal is not in respect of a Direct Control District but it is in respect of land in a Direct Control District. The appeal falls outside of the Direct Control District because it is an appeal of the application of the development regulations contained in section 85.

f) Section 710 confirms that there is a difference between the provisions of the Direct Control District and the development regulations because it says "a development may also be evaluated with respect to its compliance with the General Regulations and Special Land Use Provisions of this Bylaw".

g) It was acknowledged that the Applicant has the ability to cancel the development permit for the existing Liquor Depot store pursuant to section 17.2(1)(e) of the *Bylaw*. However, it is an issue of timing and the owner would surrender the development permit for the existing store as soon as the proposed new store is open. They would be amenable to the imposition of this condition if the appeal is allowed and the development permit granted.

ii) Position of the Development Officer, Ms. J. Kim:

[61] Ms. Kim did not attend the hearing but provided a written submission that was considered by the Board.

Decision

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

1) Pursuant to section 17.2(1)(e) of the *Edmonton Zoning Bylaw*, the Landowner must cancel the Development Permit and cease operations for the existing Alcohol Sales Use (Liquor Depot located in Oliver Square at 11724 – 104 Avenue) located 50 metres from the proposed Major Alcohol Sales Use (Wine and Beyond) before the proposed development's opening. The Board notes the Appellant proposed closing the Liquor Depot store concurrently with the opening of the Wine and Beyond store and consented to this condition to cease operations and cancel the Development Permit for the Liquor Depot store. The proposed development is not valid until the Liquor Depot Development Permit at 11724 – 104 Avenue is cancelled and no longer operating.

2) The development shall be constructed in accordance with the stamped and approved drawings.

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.

4) 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.

5) The exterior of the store shall have ample transparency from the street to allow natural surveillance.

6) Exterior lighting shall be in accordance with the minimum safety standards prescribed by the Illuminating Engineers Society of North America.

7) Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity and that all foliage shall be kept trimmed back to prevent loss of natural surveillance.

8) Customer parking shall not be located behind a building and all Parking Areas in front of the building shall be well-lit.

9) Customer access to the store shall only be from the front that is visible from a Public Road.

Reasons for Decision

[63] The proposed development, a Major Alcohol Sales Use, is a listed Use in the DC1 Direct Development Control Provision (the "DC1"), pursuant to section 3.s of Bylaw 18099 (Area 1).

[64] Because the proposed development is located within the DC1, the Board's authority is set out in section 685(4) 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
>
> (a) …
>
> (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.

[65] The Development Authority reviewed the application for the Development Permit and refused it. It was refused not because it violated any of the provisions of Bylaw 18099 (Area 1), but because it violated one Special Land Use provision found in section 85.1 of the *Edmonton Zoning Bylaw*.

[66] Section 85.1 states "Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales."

[67] This DC1 is silent with respect to the Special Land Use provisions for Major Alcohol and Minor Alcohol Sales.

[68] Section 710.4 of the *Edmonton Zoning Bylaw* is directly incorporated by reference to the provisions of a (DC1) Direct Development Control Zone.

[69] Section 710.4(3) states:

> A development may also be evaluated with respect to its compliance with:

a. the objectives and policies of an applicable Statutory Plan;

b. the General Regulations and Special Land Use Provisions of this Bylaw; and

c. the regulations of abutting Zones.

[70] Section 710.4(3)(b) clearly states that a development in a DC1 Zone **may** be evaluated with respect to the Special Land Use Provisions in the *Edmonton Zoning Bylaw*, such as section 85. It does not require that those provisions be applied. As the provision is permissive, it allows the Development Authority to exercise its discretion in applying the Special Land Use Provisions like section 85.

[71] The Board finds that the Development Authority applied section 85 rigidly to this development without regard for the DC1 provisions as a whole given the nature of the Development Permit application, the general purpose of this particular DC1, and without providing any rationale for exercising discretion to apply section 85 to this DC1.

[72] The Development Authority did not provide reasons in her refusal or her written submission that warranted her to apply section 710.4(3)(b) and enforce section 85 for this DC1 given the discretion she was provided. Further, the Development Authority was not present at the hearing to explain how discretion was applied in the (DC1) Direct Development Control Provision regulations of section 710.

[73] Therefore, based on the above, the Board finds that the Development Authority did not follow the directions of Council.

[74] The general purpose set out in the Bylaw for this very large DC1 is:

> The purpose of this Provision is to facilitate the development of a pedestrian friendly and transit-supportive area that is characterized by its strong mix of retail, office, entertainment, and residential uses and its accessibility, open space, and sensitive interface between developments.

[75] A Major Alcohol Sales Use is a listed Use in the DC1, pursuant to section 3.s of Bylaw 18099 (Area 1). The Board finds it reasonable to conclude from this inclusion that Council intended to add a Major Alcohol Sales Use to the subject Site as Bylaw 18099 was recently signed and passed on July 10, 2017.

[76] Council specifically did not include any special regulations within the DC1 regarding Alcohol Sales and specifically did not reference section 85 of the *Edmonton Zoning Bylaw*.

[77] The proposed development complies with the purpose and all of the provisions in the DC1.

[78] The proposed development is replacing an existing Alcohol Sales Use (Liquor Depot located in Oliver Square at 11724 – 104 Avenue). That Alcohol Sales Use will be closed and the Development Permit for that site will be cancelled on the opening of the proposed development.

[79] Based on photographic evidence, the Board notes that the subject DC1 is a large and diverse, high traffic commercial area that extends from 121 Street to 112 Street. It abuts 104 Avenue, a six-lane arterial roadway surrounded by a large vehicle surface parking lot on the subject Site.

[80] Closing the aforementioned existing Alcohol Sales Use and opening the new Alcohol Sales Use 50 metres away will not change the character of the neighbourhood and will have no material impact on the subject Site or surrounding land Uses. The existing Alcohol Sales Use has been operating legally in its location for several years with no known complaints.

[81] The proposed development meets the general purpose of the DC1 which is to "facilitate development of a pedestrian friendly and transit-supportive area that is characterized by its strong mix of retail, office, entertainment, and residential uses and its accessibility, open spaces, and sensitive interface between developments." With the condition imposed by the Board that will cancel the Development Permit of the Alcohol Sales 50 metres away, the proposed development will maintain the purpose of the DC1 to provide a strong mix of retail uses.

[82] Finally, the Board notes that there was no opposition to the proposed development and there was one online response in support of the proposed development.

[83] Based on the above, the appeal is allowed and the development is approved.

Ms. G. Harris, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. C. Buyze, Mr. R. Hachigian, Ms. D. Kronewitt-Martin, Mr. A. Peterson

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:

    f) 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,
    g) the requirements of the *Alberta Safety Codes Act*,
    h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    i) the requirements of any other appropriate federal, provincial or municipal legislation,
    j) 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.