



**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: April 13, 2017
Project Numbers: 241646205-001 /
241645583-001
File Number: SDAB-D-17-061 / 062

Notice of Decision

- [1] On April 5, 2017, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **March 13, 2017**. The appeals concerned the decisions of the Development Authority, issued on March 23, 2017, to approve the following developments:

Place a Temporary Sign for 90 days ending 18-JUN-2017 for EFFECTIVE SIGNS & GRAPHICS (Multi: WESTGATE MALL #2)

Place a Temporary Sign for 90 days ending 18-JUN-2017 for EFFECTIVE SIGNS & GRAPHICS (Multi: WESTGATE MALL #1)

- [2] The subject property is on Plan 0928218 Blk 30 Lot 10, located at 17010 - 90 Avenue NW, within the DC2.746 Site Specific Development Control Provision. The Summerlea Neighbourhood Area Structure 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 approved Development Permit;
 - The Development Officer’s written submissions; and
 - The Respondent’s written submissions.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – Copy of *Edmonton Zoning Bylaw* from 2009

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer indicated that he sat on a previous Board hearing for the subject Site. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel. The agent for the Appellant specifically confirmed that she did not oppose the same Presiding Officer hearing these appeals.

- [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 Presiding Officer indicated that the Respondent would not be attending the appeal hearing and submitted a submission with attachments for the Board to consider when making their decision.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Ms. Kilmartin

- [9] Ms. Kilmartin stated the main issue is the use of a Temporary Sign.
- [10] She referred to the letter received from the Respondent. She stated that their client appreciates that the signs are for business use but they are continually used and not for a limited duration.
- [11] The signs have a visual clutter and there is no quality consideration.
- [12] They would not have an issue if it was a Freestanding Sign as there is a higher standard for them to be approved.
- [13] The appearance of several signs with neon lettering has a negative visual impact in the area.
- [14] The Presiding Officer indicated that based on the Respondent's submission they admitted that the signs have been used for several years. The City has allowed these types of signs to be used in this fashion.
- [15] The Board asked Ms. Kilmartin to comment on the Respondent's offer to remove the signs for 30 days. She responded that the main concern is the quality of the signs.
- [16] She agreed that the signs are a listed Use; however, they are permanent and not temporary.
- [17] West Edmonton Mall has made improvements to the area and the quality of the signs date the area.
- [18] With regard to the visual clutter, she stated that Google street view shows that there are several signs in the area on 170 Street and 90 Avenue.

ii) Position of the Development Officer, Ms. Mercier

- [19] Ms. Mercier reviewed the proposed development based on the *Edmonton Zoning Bylaw* from 2009, stamped Exhibit A.
- [20] The Presiding Officer referred to the Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309. Paragraph 4 states:

On its correct interpretation, section 2.7 does not override section 2.4. **Section 2.7 is only intended to deal with a situation where a Direct Control bylaw passed before 2001 contained an express cross-reference to a provision of the old Land Use Bylaw.** Such cross-references might not, of course, be directly transferable to the provisions of the new Zoning Bylaw, and section 2.7 was required to ensure that such express references remained meaningful, and faithful to the original intent of the Bylaw. There is, however, no relevant cross-reference in Bylaw 12011 to the old Land Use Bylaw. Section 2.4 of the new Zoning Bylaw therefore provides that it applies to Direct Control Bylaw 12011, and section 2.6 confirms that Direct Control Bylaw is “hereby incorporated” into the new Zoning Bylaw. [emphasis added]

- [21] The Presiding Officer suggested that Section 2.7 should be used to determine whether the *Land Use Bylaw* or *Edmonton Zoning Bylaw* should be used, not to determine whether the *Edmonton Zoning Bylaw* at the date when the Direct Control was passed should be referred to. Had the current version of the Bylaw been used, there is no limitation on the amount of consecutive days a Temporary Sign could remain. No variance would have been necessary.

iii) Rebuttal of the Appellant

- [22] The Appellant did not have anything to add in rebuttal.

Decision

- [23] The appeals are DENIED and the decisions of the Development Authority are CONFIRMED. The developments are GRANTED with conditions as approved by the Development Authority.

Reasons for Decision

- [24] The proposed Signs are Listed Uses in the DC2.746 Site Specific Development Control Provision.

- [25] Section 641(4)(b) of the *Municipal Government Act* states that despite section 685, 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.
- [26] Accordingly, the Board cannot vary the decision of the Development Officer unless it concludes that the Development Officer failed to follow the directions of Council. To determine what the directions of Council are, the Board must look to, among other things, the provisions of the DC. DC2.746.4.j states "Signs shall be developed in accordance with Schedule 59E."
- [27] Section 11.3(1)(a) of the *Edmonton Zoning Bylaw* states that in approving a Development Permit Application pursuant to Section 11.2, the Development Officer shall adhere to the following: a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone.
- [28] Based on the evidence submitted, it would be improper to make a judgement on the application of the Development Officer's use of her variance power. There are two principal reasons supporting this decision:
1. In the decision of the Alberta Court of Appeal in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309, at paragraph 8, the Court references Section 720.3(3) which states "all Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision." The Court held that the "mere listing of a series of permissible uses does not "specifically exclude" other general provisions of the Bylaw. The logic of this argument would exclude the application of all generic rules, which could not have been intended." **Therefore it follows that the Development Officer's general variance powers found in Section 11.3(1)(a) apply in this case.**
 2. DC2.746.4.j states "Signs shall be developed in accordance with Schedule 59E." Sign Schedule 59E allows for Temporary Signs to be in place for a limited duration. Under Section 6.2(27), "Temporary Signs means any On-premises or Off-premises Sign that is **relocatable or removable** [emphasis added by the Board] from a Site and used for advertising of a limited duration."

These are Temporary Signs and notwithstanding that the signs may have been at the site for some 7 years, are temporary by definition. The Board acknowledges the use of the word “temporary” is misleading and believes the terminology “**movable**” is more accurate.

- [29] If the Development Officer had applied Section 59.2(16) of the current *Edmonton Zoning Bylaw*, the maximum duration of display for each Temporary On-premises Sign would be 365 days with no limitation on the amount of consecutive days a Temporary Sign could remain. No variance would have been necessary.
- [30] Based on the evidence submitted, and notwithstanding the application of the 2009 version of the *Edmonton Zoning Bylaw*, the Board finds that the Development Officer followed the directions of City Council outlined in the DC2.746 Site Specific Development Control Provision.
- [31] In the alternative to the foregoing, if the Development Officer erred by applying the old Bylaw provisions, then this Board finds that this failure did not materially affect the direction of City Council and that the end result would have produced the same effect. Namely, that the signs be allowed on the direction of City Council through the Development Authority. Consequently, this Board sees no reason to interfere with the decision.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

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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P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: April 13, 2017
Project Number: 180369757-011
File Number: SDAB-D-17-051

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on March 9, 2017, made the following decision:

File SDAB-D-17-051 is tabled until April 5/6, 2017 in order for the Development Officer to provide an updated locational map showing all Alcohol Sales Uses within 500 metres of the proposed development. This includes UnWined located in Edmonton City Center Mall (10205 – 101 Street) and the distance of the proposed development to the Alcohol Sales Use with Project #00838734-001. The Development Officer should confirm the 500 metres separation distance is measured from the closest point of the Alcohol Sales Use to the closest point of any other approved Alcohol Sales Use, as opposed to distances between Site boundaries. The Development Officer is to provide this information to the Board and Appellant no later than March 29, 2017.

- [2] On April 5, 2017, the Board made and passed the following motion:

That SDAB-D-16-051 be raised from the table.

- [3] On April 5, 2017, the Board heard an appeal that was filed on **February 8, 2017**. The appeal concerned the decision of the Development Authority, issued on February 1, 2017 to refuse the following development:

To change the Use from General Retail Stores Use and to Major Alcohol Sales Building

- [4] The subject property is on Part of Unit 1 Plan 042 5913 (1C as the owner has divided Unit 1 into 3 Parts for his own purposes) (Plan 0425913,1123267,1621940), located at 10020 - Jasper Avenue NW, within the CCA Core Commercial Arts Zone, Special Area Downtown.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submissions;
- Online responses; and
- Updated locational map submitted by the Development Officer.

Preliminary Matters

[6] At the outset of the appeal hearing, the Presiding Officer introduced the panel to the parties in attendance. Mr. Noce, representing the Liquor Depot, indicated that he was opposed to Mr. Tuttle sitting as the Presiding Officer due to Mr. Tuttle's employer being actively involved with one of his clients. Mr. Tuttle indicated that although that matter has been dormant for some time, he excused himself from the hearing and Mr. Somerville continued the hearing as the Presiding Officer. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the remaining composition of the panel.

[7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the "*Municipal Government Act*").

Summary of Hearing

[9] The Presiding Officer asked Mr. Noce to speak first and provide information to the Board how his client, the Liquor Depot, is affected by the proposed development.

i) *Position of Mr. Noce, representing the Liquor Depot*

[10] Liquor Depot has a store at 109 Street and Jasper Avenue.

[11] He referred to Section 687(1)(d) of the *Municipal Government Act* that states:

At a hearing under section 686, the subdivision and development appeal board must hear

- (d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

- [12] Mr. Noce stated that this section is relevant and gives the Board the power to hear from any person who claims to be affected.
- [13] In his opinion, an individual does not have to be an adjacent property owner, but just claim to be affected.
- [14] He referred to Section 10.2(2), pages 10-15 of Professor Laux's 2002 book *Planning Law and Practice in Alberta*, that states:
- Each case has to be judged on its individual merits to determine whether or not a person seeking to appeal has a sufficient connection with, or particular interest in, a proposed development before it may be said that he is "affected" within the meaning of the Act. Certainly, a person is affected if he owns property located sufficiently close to a proposed development so that it can be reasonably said that the development might adversely affect the use, enjoyment or amenities of his property. Tenants of such property should also have status to appeal. A person whose interest might be purely financial is an "affected" person as well, as in the case where a shopping centre operator seeks to appeal the issuance of a permit authorizing another shopping mall, and where that new mall might prejudicially affect his business.
- [15] The definition or the parameters of what is being affected is very broad. He has to prove how his client is affected and the Board will have to determine that.
- [16] Liquor Depot has been and continues to be a strong proponent of the 500-metre separation rule and is supportive of the Alberta Liquor Store Association's efforts to create the 500-metre separation rule.
- [17] His submission is that Liquor Depot is affected by liquor stores generally as there are several liquor stores within 500 metres. Liquor Depot is affected by the liquor industry in Edmonton. A bad operator or more liquor stores can negatively impact any liquor store.
- [18] When looking at the language under the *Municipal Government Act* and interpreted broadly, they have overcome the hurdle to establish how they are affected.
- [19] He referred to a previous SDAB Decision from July 21, 2016 for a liquor store in downtown Edmonton. A citizen from a non-profit organization was in attendance at that hearing and the Board determined that she was affected. However, in the decision the Board did not provide reasons as to how they were affected and he could have had some guidance from that decision as to how the Board determines an affected party. However, each appeal is different and considered case by case.
- [20] In response to a question by the Board, he confirmed that the Liquor Depot is more than 500 metres away.

- [21] In response to a question by the Board, Mr. Yu indicated that he was not aware that Liquor Depot was in opposition to the proposed development and that Legal Counsel was appearing on their behalf.
- [22] The Development Officer did not have anything to add with regard to the Liquor Depot being affected.
- [23] The Board recessed for a short time to determine if they would allow Mr. Noce to speak on behalf of the Liquor Depot.
- [24] Upon reconvening, the Board indicated that, although they have not determined if the Liquor Depot is an affected party, Mr. Noce could provide submissions on behalf of the Liquor Depot.
- [25] In response to a question from the Presiding Officer, Mr. Yu confirmed that he did not want to seek Legal Counsel and would like to proceed and speak for himself.

ii) Position of the Appellant, Mr. Yu

- [26] Mr. Yu referred to and read from his written submission and outlined the follow points from his submission:
1. The city wants Jasper Avenue to be Edmonton's Main Street. The city wants downtown Edmonton to be Transit Oriented, to be the Primary Destination for Visitors and to be the Senior Friendly Downtown environment. Population has grown from 5,130 people in 1996 to 11,000 people in 2009 and forecasted to be 24,000 people by 2030.
 2. New Cambridge Lofts is a commercial / residential condominium situated in the heart of downtown Edmonton on Jasper Avenue. It connects directly to the Central LRT pedway. They own the commercial condo units 1 and 5 in the basement. They also own a residential condo unit in the same building. They have operated the Orbits convenience store in unit 5 for over 6 years and they recently started the Baba Finks Canteen in unit 1A since last December. Over the past two years, a number of residents in the building asked them to consider expanding to the liquor store business. They trust them because his family is living in the same building and they have been doing business in the building for over 6 years. They trust their management style as they are local, friendly and responsible business owners.
 3. On October 28, 2016, they emailed the property management company to advise the Condo Board that they intend to open a liquor store business in 1C. They then went to AGLC for advice and had AGLC inspectors visit their proposed site twice to ensure compliance. The AGLC inspector indicated there are two minor issues (both can be easily addressed) inside the unit, otherwise, they have no issue for a liquor store operating in the location.

They then submitted their development permit application on December 15, 2016. On February 1, 2017, the development application has been refused and the reason for the refusal is the separation distance outlined in Bylaw Section 85(1).

- [27] In response to a question from the Presiding Officer, Mr. Yu confirmed that he was not adding new information from what he previously submitted. The Presiding Officer indicated that all parties have received and reviewed his written submission and the Board would prefer to proceed to ask questions. Mr. Yu agreed to this process.
- [28] In response to questions by the Board, Mr. Yu confirmed that his family lives in one of the residential condo units. Unit 1 has been divided into three units. The convenience store is operated from Unit 1A and Unit 1B and Unit 1C are vacant. The convenience store will be located in the same area of the building.
- [29] In his opinion, the proposed liquor store is different than others in the area due to the location and the types of liquor store he will have.
- [30] The liquor store will accommodate people who do not drive and can walk to the liquor store and will be pedestrian friendly.
- [31] They were relying on residents in the area to sign in support when they came to the convenience store.
- [32] He attempted to speak to the Condominium Board when he received their letter.
- [33] He confirmed that there is an entrance door to the Cambridge Lofts.
- [34] There is a bus stop directly outside the entrance to the Cambridge Lofts and a door accessing the LRT station, the pedway, and commercial businesses is separate from the Cambridge Lofts entrance.
- [35] The building is a mixture of residential and businesses each with their own entrance.
- [36] He could propose to open any business in this location, not just a liquor store.
- [37] The public could not access the residential units if they entered the lobby of the Cambridge Lofts.

iii) Position of the Development Officer, Mr. Cormier

- [38] Mr. Cormier did not have any presentation and was willing to answer questions.
- [39] He referred to the location map showing liquor stores in the area and indicated the one property on the map that was not addressed previously.
- [40] In response to questions by the Board, he confirmed that the main reason for refusing the proposed development was the 500-metre separation distance to another liquor store.

- [41] He confirmed that there was no hardship for the proposed development.
- [42] He confirmed that he did not have variance powers to grant a variance and would have still refused the development permit due to the 500-metre separation distance.
- [43] The Board confirmed with the Development Officer that the parking requirement for the proposed development is one stall. He stated the parking was not shown on the application. This was a change in use from General Retail to a Major Alcohol Sales Use. The proposed change in use did not increase the parking requirements. As there was a permit previously granted for the General Retail use, he assumed either parking was met or a variance had previously been granted. With no increase in parking, no further variance is required.

iv) Position of Mr. Noce, Legal Counsel representing the Liquor Depot

- [44] Mr. Noce is representing Liquor Depot, located at 10164 – 109 Street.
- [45] Section 85 ought to be adhered to. He has heard nothing why a variance should be granted.
- [46] He was involved in drafting of this particular bylaw that was first created in 2007.
- [47] The two liquor stores referenced in the locational map were existing at time of the bylaw and they are grandfathered in.
- [48] Section 85 makes it clear that no two liquor stores can be located within 500-metres of each other.
- [49] In December 2016, City Council amended the bylaw and created exemptions in suburban areas. Section 85(2) states notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales if all the following regulations are met: the Major Alcohol Sales or Minor Alcohol Sales are located on separate Sites; the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85; and at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.
- [50] This change in the bylaw was a result of a Court of Appeal decision in *Newcastle Centre GP Ltd. v. Edmonton (City)*, 2014 ABCA 295 (“Newcastle”).
- [51] Mr. Noce submitted that none of the variance powers provided to the Development Officer in Sections 85(7), 85(8), and 85(9) are applicable. The Board does have the ability to vary, pursuant to Section 687(3)(d).

However, the Board was not provided with any justification to vary Section 85(1). There is opposition from the Condo Board and residents where the proposed development is to be located.

- [52] The whole purpose of the bylaw is to minimize liquor stores in the inner city. City Council created exemptions for suburban areas only.
- [53] No evidence provided before the Board that there is insufficient Alcohol Sales Use within the downtown core. The Appellant failed to provide any basis why the store is required. In fact, the evidence is to the contrary. There are a sufficient number of stores. Additional stores pose problems in the community. The Condo Board provided an American study to support that contention.
- [54] The Presiding Officer referenced the *Newcastle* decision. Adhering to the rule is not a sufficient reason and the Board needs to find a material adverse impact to not go ahead. Mr. Noce agreed the Board can grant a variance. The Board needs to look at Section 687(3)(d) to determine whether a variance can be granted. The Board must examine if there are a sufficient number of liquor stores, which poses a conflict for residents or people in the city core. There is opposition to the proposed development. In *Newcastle*, the liquor stores in conflict serviced two suburban communities and were separated from each other by several lanes of traffic. None of those factors exist here. This is the downtown core with already a high concentration of Alcohol Sales uses in the area.
- [55] The Board asked what kind of permit the Liquor Depot had. Mr. Noce assumed it was a Major Alcohol Sales use. The Presiding Officer asked Mr. Noce to comment on the Appellant's submission that other stores within the 500 metres radius were wine stores only and what he is proposing fills a gap. Mr. Noce stated the *Edmonton Zoning Bylaw* makes no distinction between different types of alcohol sold. The fact remains that there are existing liquor stores. It does not matter that they offer different products.
- [56] Mr. Noce confirmed that when the bylaw was enacted in 2007, his client, Liquor Depot, was already present. Also, already present was a liquor store on Jasper Avenue and 113 Street. The Board recently granted a variance to a store in the Quarters area.

The Board asked Mr. Cormier to answer an additional question.

- [57] The Board asked the Development Officer if he had any detail as to the products sold within the three Alcohol Sales uses within 500 metres. The Development Officer did not but stated the *Edmonton Zoning Bylaw* does not differentiate between different alcohol types.

v) *Rebuttal of the Appellant*

- [58] The Appellant submitted the Condo Board's evidence was unreliable. People were consulted in a private manner.

He asked but was not provided with any proof of their evidence. They refused to discuss the issue with him. He does not believe that that is the opinion of the majority of residents in the building. The space has been open for 30 years. Having a well-managed liquor store is advantageous. He believes had he been given the chance, he could have turned opposition into support.

- [59] The Appellant does not agree that Mr. Noce's client is an "affected" person. With his reasoning, any citizen in Canada would be affected because of alcohol taxes.
- [60] The current hours of his business operation is 8:00 a.m. to 9:00 p.m. He plans to use the same staff. He is considering operating the business between the hours of 10:00 a.m. to 10:00 p.m. However, there are many factors to consider, such as demand by his customers. The LRT is closed between 2:00 a.m. to 5:00 a.m. so he really only has a 21 hour entrance. There could be a potential safety issue with street people. He has considered a membership system, which is not open to the general public and perhaps members can have extended hours.
- [61] The Appellant believes he will have 4 types of customers: residents; those living nearby; hotel patrons; and transit commuters. People will not drive to the store. The entire building uses street parking. There are arrangements for a loading space through the back alley.
- [62] The Appellant has operated his convenience store for 6 years and the restaurant since 2016. He became the owner of Unit 1 in July 2015. That unit took a year to divide. It was a restaurant previously. He hoped the tenant for Unit 1b will be a restaurant. He looked into a Registered Massage Therapist for Unit 1c, which did not work out. It makes sense that a liquor store would be located next to a convenience store.
- [63] The Appellant confirmed that he does not want an adjournment to speak to Legal Counsel.

Decision

- [64] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority. In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. Section 85.1, which states that 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, is waived.

Reasons for Decision

- [65] Under Section 910.5(2)(s), **Major Alcohol Sales** is a **Permitted Use** in the CCA Core Commercial Arts Zone.
- [66] Mr. Noce appeared before the Board representing Liquor Depot, located at 10164 – 109 Street. Under Section 687(1)(d) of the *Municipal Government Act*, the Board must hear any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person. The Liquor Depot claimed to be affected and the Board agreed to hear from their representative.
- [67] The Board finds the proposed development meets the General Purpose of the CCA Core Commercial Arts Zone which is to provide a Zone for a variety of high density and quality development that accommodates office, retail, service, institutional, residential, arts and entertainment Uses and meet the Use objectives for the Commercial Cultural Core. The intent is to further strengthen the Downtown's central area by providing continuous retail at Grade, enhancing arts and entertainment activities, accommodating Residential Uses and making the Core more pedestrian friendly.
- [68] While there are two other Alcohol Sales uses that are clearly within 500 metres of the proposed development, the Board accepts the evidence that these are wine stores that are open only through normal business hours and do not serve the needs of customers that want to purchase beer or spirits.
- [69] The Board received evidence both in support and in opposition to the proposed development, and took particular note of the letter from the New Cambridge Condo Board expressing concern about the compatibility of an Alcohol Sales Use in the basement of a 200 plus residential unit building. The Board does not concur in that concern because, while both uses may be in the same building, access to the residential Use is restricted to only residents and invited guests. A completely separate entrance is provided to allow the public to access the commercial spaces and the LRT.
- [70] The Board further notes that the letter from the New Cambridge Condo Board provided no indication that condo owners had been consulted, while the Appellant submitted a petition of support for the liquor store signed by 176 individuals, 86 of whom as residents of New Cambridge Lofts.
- [71] The Board notes that, given its location adjacent to an LRT station and the scarcity and cost of parking in the downtown area, the proposed development is a uniquely transport and pedestrian oriented development. Accordingly, the Board finds the waiver of the 500-metre separation distance between the proposed development and surrounding Alcohol Sales Uses is justified for the following reasons:
- a) The growing number of condo and apartment dwellers in the downtown area who do not have or use automobiles, and tend to walk in the downtown area.

b) The separation distance appropriate for a motoring public should be much less for a walking public.

[72] Based on the evidence presented, the Board finds the proposed development would 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.

A handwritten signature in blue ink, appearing to read "Noel R. Somerville". The signature is fluid and cursive, with the first name "Noel" written in a smaller, more upright script than the last name "Somerville".

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. **The Appellant is advised to consider Crime Prevention Through Environmental Design criteria in accordance with Section 85(12) of the *Edmonton Zoning Bylaw*.**
2. 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.
3. 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.
4. 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.
5. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
6. 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.
7. 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.