



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Miller Thomson LLP for Alcanna Cannabis
Stores Limited / 721803 Alberta Ltd.
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Date: September 3, 2019
Project Number: 286660760-009
File Number: SDAB-D-19-135

Notice of Decision

[1] On August 29, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 5, 2019**. The appeal concerned the decision of the Development Authority, issued on July 26, 2019, to refuse the following development:

Continue to operate a Cannabis Retail Sales store and to construct interior alterations.

[2] The subject property is on Plan 1225U Lots 1-4, located at 12120 - Jasper Avenue NW, within the (CB3) Commercial Mixed Business Zone. The Main Streets Overlay and Oliver Area Redevelopment Plan apply to the subject property.

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

- A copy of the refused Development Permit, attachments and the proposed plans;
- The Development Officer’s written submission;
- The Appellant’s written submissions; and
- One email in opposition and five online responses in opposition.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – A summary submission of the Appellant.

Preliminary Matters

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

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

Summary of Hearing

i) Position of the Appellant, R. Noce, Miller Thomson LLP representing Alcanna Cannabis

- [8] The Presiding Officer advised Mr. Noce that the Board had reviewed all submissions prior to the hearing and asked if anything had substantially changed from when this matter was originally heard on October 24, 2018 (SDAB-D-18-175). Mr. Noce confirmed that nothing has changed other than exterior and interior construction work is underway.
- [9] The previous SDAB-D-18-175 decision issued on November 8, 2018 conditioned that operations must commence within nine (9) months of the date of the issuance of the Development Permit. This was not possible due to the moratorium on issuing cannabis licences imposed by Alberta Gaming, Liquor and Cannabis. This moratorium has now been lifted.
- [10] Mr. Noce submitted a summary of his written presentation, marked *Exhibit A*.

ii) Position of the Development Officer, I. Welch

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

Decision

- [12] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
 - customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;

- the exterior of all stores shall have ample transparency from the street;
 - Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
 - Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.
2. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
 3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).

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

1. The minimum required separation distance requirement from public lands (Grant Notley Park) per section 70(3) is varied to allow a deficiency of 20 metres, thereby decreasing the minimum required separation distance to 80 metres.

Reasons for Decision

[14] Cannabis Retail Sales is a Permitted Use in the (CB3) Commercial Mixed Business Zone. The only issue before the Board is that the proposed development is 80 metres away from public lands, instead of the required 100 metres separation distance as set out in the *Edmonton Zoning Bylaw* per section 70(3).

[15] The Appellants seek a variance from that development regulation. The Board grants the variance, and does so for the following reasons:

- a) The subject site is large and there is significant on-site parking that causes the actual retail location to be further away from the public lands than the actual site boundary would indicate.
- b) The subject site is separated from the public lands by Jasper Avenue, a six lane arterial road, which creates a significant barrier between the subject site and the public lands that are at issue.

- c) The public lands at issue are not easily accessed by pedestrians from the subject site due to the interposition of highly developed private property between the subject site and the public lands, reducing the likelihood that the customers of the proposed development would walk to the public lands and consume cannabis on the public lands. It is actually 294 metres from the Cannabis Retail Sales building to find the first access point to the ravine park system.
 - d) The public lands are not visible from the subject site.
 - e) The public lands located within the 100-metre radius from the subject site are not developed, contain no recreational facilities, but are in fact a heavily treed, steeply sloped ravine. It is not a location that would tend to attract any public congregation.
- [16] Nothing has changed substantially since October 24, 2018, the date this matter was originally heard by this Board, other than the fact that construction is now underway. It would be unfair to the Appellants, who proceeded with construction based on an approved permit (SDAB-D-18-175), to deny this appeal. The Appellants were delayed from commencing operations within the conditioned nine (9) months through no fault of their own.
- [17] No one appeared at the hearing to oppose the development. The Board acknowledges the receipt of six objections; however, these objections echoed the concerns that were received at the October 24, 2018 hearing and dealt with a general discomfort to Cannabis Retail Sales in general.
- [18] For these reasons, the Board concludes that granting the variance will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky, Mr. V. Laberge, Ms. M. McCallum, Ms. E. Solez

cc: Development & Zoning Services – Mr. I. Welch / Mr. H. Luke

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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Winter's Restaurant & Lounge
10650 Winterburn Road NW
Edmonton AB T5S 1T7

Date: September 3, 2019
Project Number: 272466799-001
File Number: SDAB-D-19-136

Notice of Decision

[1] On August 29, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 3, 2019**. The appeal concerned the decision of the Development Authority, issued on June 17, 2019, to refuse the following development:

Construct an outdoor patio (54m²), accessory to an existing Bar and Neighbourhood Pub (Winters Lounge)

[2] The subject property is on NE-1-53-26-4, located at 10630 - Winterburn Road NW, within the (CNC) Neighbourhood Convenience Commercial Zone and the (RMH) Mobile Home Zone. The subject development is located at 10650 – Winterburn Road NW, within the (CNC) Neighbourhood Convenience Commercial Zone. The Winterburn Industrial Area Structure Plan applies to the subject property.

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

- A copy of the refused Development Permit and the proposed plans;
- The Development Officer’s written submission;
- The original appeal submission; and
- One online response (neutral).

Preliminary Matters

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

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

[6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Winter's Restaurant and Bar ("Winter's")*

- [7] Ms. M. Frost appeared to represent the Appellant. She has worked at this establishment for the past 15 years and is of the understanding that the outdoor patio has existed for at least 30 years.
- [8] It is policy that the outdoor patio is closed by 10:00 p.m.
- [9] Winter's has a mutually beneficial relationship with the day care next door. The restaurant occasionally provides free pizza for the day care and helps keep the outdoor back area clean for the children. The day care closes at 6:00 p.m. which frees up additional parking spaces for their establishment in the evening.
- [10] Ms. Frost is only aware of one complaint during the time she has been there and she dealt with it immediately.
- [11] As 90 percent of the customers are from the mobile home zone many patrons walk to the establishment.
- [12] Ms. Frost provided the following responses to questions from the Board:
- a) She is aware that the original permit (DAB/88-708) allowed a capacity of 166 occupants but this capacity has never been reached. There may be a total of 40 occupants in the restaurant and bar at the busiest time. Ms. Frost confirmed she is not looking for an increase to the maximum permitted capacity of 166.
 - b) Most of the patrons are regulars. Last weekend, at the busiest time, there were 33 occupants in the bar.
 - c) There are only four tables on the outdoor patio with seating for 20 people. There are no lights and there is no music system. She reiterated that the outdoor patio is closed by 10:00 p.m.
 - d) The only complaint Ms. Frost is aware of relating to the outdoor patio is one phone call last winter that was resolved.
 - e) There has never been a parking issue and there are 20 to 30 vacant parking spaces at any given time. The only time the parking lot is busy is when the stalls are taken up by school buses.
 - f) Many locals walk to the establishment.

ii) *Position of the Development Officer, P. Adams*

[13] The Development Authority did not attend the hearing and the Board relied on Mr. Adams' written submission.

Decision

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

1. The total permitted occupancy of the bar and restaurant is 166 as per the previously approved SDAB Decision (DAB/88-708).

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

1. The requirement that the outdoor patio cannot be directly facing and abutting the (RMH) Mobile Home Zone pursuant to Section 90(1) is waived.
2. The minimum required number of 68 parking spaces pursuant to Section 54.2, Schedule 1(A)(14) is varied to allow a deficiency of 14 parking spaces, thereby decreasing the minimum required number of parking spaces to 54.

Reasons for Decision

[16] On March 8, 1989 the Board approved a development to "Change the use of a minor eating and drinking establishment (100 seats) to a major eating and drinking establishment (166 seats with dance floor) and construct interior alterations" (DAB/88-708). That decision was never appealed and is final despite this development being neither a Permitted nor a Discretionary Use. The same parties are involved today and the Appellants confirmed they are not seeking a change to the scope of use and are not seeking to increase the number of occupants above 166. The Board has added a condition confirming the scope of the permit approved by the Board in 1989.

[17] The proposed outdoor patio requires two variances. The Board allows these variances for the following reasons:

1. The outdoor patio has been in existence for more than 30 years.
2. Only one complaint has ever been received which was dealt with immediately.

3. The adjacent day care and the subject development are complementary uses within the community and the two businesses share parking spaces.
4. The parking requirement is based on the public space within the establishment. Based on the evidence provided, the total occupancy is always significantly under what is permitted. The business caters to the local community and people are within walking distance; therefore, fewer parking spaces are required.

[18] There was no written opposition received and no one appeared at the hearing to oppose the proposed development.

[19] Based on the above, the Board finds that granting the variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky, Mr. V. Laberge, Ms. M. McCallum, Ms. E. Solez

cc: Development & Zoning Services – Mr. P. Adams / Mr. H. Luke

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