



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 7, 2018
Project Number: 285822622-001
File Number: SDAB-D-18-133

Notice of Decision

- [1] On August 30, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 7, 2018. The appeal concerned the decision of the Development Authority, issued on July 27, 2018, to refuse the following development:

To change the Use from Warehouse Sales to a Cannabis Retail Sales

- [2] The subject property is on Condo Common Area (Plan 0825767), located at 11610 - 119 Street NW, within the CB2 General Business Zone.
- [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;
 - The Appellant’s written submissions; and
 - Online responses in opposition.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Order in Council approved June 27, 2018
 - Exhibit B – A.R. 13/2018 *Gaming, Liquor and Cannabis Act*, Amendment Regulation
 - Exhibit C – Analysis of the *Gaming, Liquor and Cannabis Regulation* provided by the Appellant

Preliminary Matters

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

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

Summary of Hearing

- i) *Position of the Appellant, Mr. James Murphy, Q.C. & Mr. Kevin Haldane, Ogilvie LLP, representing the owner/operators, Mr. N. Booth and Mr. M. Aker:*
- [8] The proposed development requires a variance in the separation distance regulations and a variance in the minimum required number of parking spaces.
- [9] The bigger issue is how the changes made to Provincial legislation impact the ability of the Board and the City of Edmonton when dealing with Cannabis Retail Sales.
- [10] The proposed development is a Permitted Use in the CB2 General Business Zone. The objections of a neighbouring business owner were acknowledged but it was his opinion that the concerns were related to a different premises and not the site of the proposed development.
- [11] The Court of Appeal determined in *Thomas v Edmonton (City)*, 2016 ABCA 57 [Thomas], that Statutory Plans and land use bylaws set out general development standards that are common to all lands in a specific area. These standards are typically defined with precision so that everyone understands what a particular site can be used for. However, it is recognized that there will be cases in which a strict application of the set standards could lead to an unreasonable result. To relieve against hardship, the Legislature has conferred on Subdivision and Development Appeal Boards the authority to relax – that is vary, dispense with or waive development standards in the applicable land use bylaw providing certain conditions as set out in Section 687(3)(d) of the *Municipal Government Act* are met. This provides the Board with direction on how to deal with unique situations.
- [12] Section 70 of the *Edmonton Zoning Bylaw* was adopted on June 12, 2018. This section established regulations for Cannabis Retail Sales. Section 70(2) requires a minimum 200 metre separation distance from any site being used for a public library, or for public or private education at the time of the application for the Development Permit for Cannabis Retail Sales. The City determined that this distance would be measured from property line to property line as opposed to business to business or door to door. The Development Officer cannot grant a variance to 70(2) or 70(3) pursuant to section 70(4).
- [13] In this case, the school is located on the lot that housed the old City Centre Airport and the lot is approximately 535 acres in size.

- [14] A map was referenced to illustrate that the boundary of the site of the proposed development is located 73 metres away from the boundary of the old City Airport site, the site on which the school is located. Therefore, the Development Officer had to refuse this development permit application.
- [15] An aerial map was referenced to illustrate the reality of the separation distance between the site of the proposed development and the site on which the school is located. The school is housed in part of the old airport infrastructure and the actual distance between the site boundary and the school is approximately 400 metres. It was his opinion that this is exactly the sort of unexpected result, from a strict application of the wording in the *Edmonton Zoning Bylaw*, that the Court had in mind in *Thomas*. If the purpose and intent of the regulation is to provide a separation between a school and the business, then the current conditions accomplish this intent.
- [16] Section 687(3)(d) of the *Municipal Government Act* provides authority for the Board to grant a variance in this case. The proposed development is a Permitted Use on a commercial site that is physically separated from the school by 400 metres and will not unduly affect the amenities of the neighbourhood or the use, enjoyment or value of neighbouring parcels of land.
- [17] Photographs were referenced to illustrate the location of the proposed development in the southeast corner of the building that is located south of a large undeveloped industrial site. Owners of the building have leased the appellants the undeveloped site as a vacant lot to provide additional parking if required. Although the total deficiency looks like a large number, the proposed change in Use from Warehouse Sales to Cannabis Retail Sales only increases the deficiency by 1.3 parking spaces, which is de minimis. One of the bays in this building was leased by the Axehole, an indoor axe and knife throwing facility, which was classified as an Indoor Participation and Recreation Use and requires more parking than is reasonable on this site, skewing the parking calculation. The Axehole has not renewed their lease and will be relocating to another site further alleviating parking concerns.
- [18] The strict application of the minimum required separation distance serves no purpose because of the size of the site on which the school is located. The Court of Appeal has determined that the Board has the authority to vary a general regulation.
- [19] This is the best possible first case because the municipal issues related to the proposed development can be readily dealt with but what is not apparent is exactly how the Provincial legislation impacts the development regulations contained in the *Edmonton Zoning Bylaw* and the *Municipal Government Act*.
- [20] The *Gaming, Liquor and Cannabis Act*, RSA 2000, c. G-1 came into effect by proclamation on June 27, 2018, after which amendments were made to the *Municipal Government Act* and new regulations came into effect. Section 640(7) of the *Municipal Government Act* requires that a land use bylaw must be consistent with the applicable

requirements of the regulation contained in the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

- [21] It was his opinion that some of the language used in the Provincial legislation is troublesome because one cannot have premises described in a cannabis licence until a development permit is issued. It was his assumption that the intent of the amendment is to ensure that a land use bylaw is consistent with Provincial regulations vis-a-vis premises that might or would be subject to a cannabis licence.
- [22] Section 642(5) of the *Municipal Government Act* deals with Permitted and Discretionary uses. The City has elected to make Cannabis Retail Sales a Permitted Use in various locations to avoid appeals. This is binding on the Development Officer but the authority of the Board is different.
- [23] Section 687(3) has been amended by the addition of (a.4) which states that the Board must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.
- [24] Section 104 and 105 of the *Gaming, Liquor and Cannabis Regulations* were referenced. Section 105(1)(f) applies to this application because the Academy is sponsored by the Edmonton Public School Board and is a school as defined in the *School Act*. Subsection 2 does not apply. Subsection 3 states that for the purposes of sections 640(7), 642(5) and 687(3) of the *Municipal Government Act*, a premises described in a cannabis licence may not have any part of an exterior wall that is located within 100 metres of (b) a building containing a school or a boundary of a parcel of land on which the building is located.
- [25] Mr. Murphy referenced extracts from all of the pertinent legislation, marked Exhibit A and B and provided his analysis, marked Exhibit C.
- [26] The starting point of the measurement in Section 105(3) is the exterior wall of the **premises** (not the parcel or the building).
- [27] The distance factor in the measurement is 100 metres. The end point of the measurement is either a building containing a school; or the property line of the parcel that the building sits on.
- [28] This regulation is horribly drafted because even though it is set in the disjunctive, the second end point always prevails, i.e. the building will always be at or inside the property line. This does not affect this application because it meets the stricter of the two requirements. The end point for the 100 metre measurement is either a building containing a school or the parcel that the building sits on. The measurement modes are “building to building” or “building to property line”. Only two modes of measurement referenced.

- [29] Section 105(4) states that despite subsection (2)(a), on application by a municipality the board may, if the board considers it appropriate to do so, issue a cannabis store licence in respect of a premises that meets the requirements of subsection (3) but for which a new municipal development permit is not required under the *Municipal Government Act*.
- [30] This might apply in circumstances where “Cannabis Retail” is not a distinct Use Class, but is included in a “General Retail” category and a “General Retail” development permit is already in place. It does not impact this application.
- [31] Section 105(5) states that a municipality may, in a land use bylaw, expressly vary the distance set by subsection (3) and set a different distance that is applicable to one or more of the types of properties referred to in subsection (3)(a) to (c), and where a municipality has done so, subsection (3) does not apply to a premises to the extent the variation in the land use bylaw is applicable to it.
- [32] The “distance set by subsection (3)” is 100 metres. This subsection allows a municipality to “set a different distance”. It does not allow the municipality to establish a different mode of measurement. Subsection 105(5) allows a municipality to set a different distance; it does not allow them to establish a different mode of distance.
- [33] Section 70(2) of the *Edmonton Zoning Bylaw* is not enacted pursuant to 105(5) of the *Gaming, Liquor and Cannabis Regulation*. It does not expressly “set a different distance”. Instead, it establishes an entirely new “property line to property line” separation distance criteria in addition to, but not in substitution for, the “building to building” and “building to property line” established in section 105(3).
- [34] This is a new standard and the separation distance established in the *Edmonton Zoning Bylaw* can exist in harmony with the separation distance established in the Provincial regulations. There is no true conflict between the two because, by conforming to the higher criteria in the *Edmonton Zoning Bylaw*, you automatically conform to the lesser Provincial standard.
- [35] In addition to the obvious difference between what the City has done and what the Province has allowed them to do in section 105(5), this section requires the municipality to “expressly vary the distance set by subsection (3)”. Not only does section 70(2) of the *Edmonton Zoning Bylaw* fail to express that intention, it could not. Section 70(2) of the *Edmonton Zoning Bylaw* became effective on June 12, 2018 before the *Gaming, Liquor and Cannabis Act* was proclaimed on June 27, 2018. At the passage of section 70(2) of the *Edmonton Zoning Bylaw*, there was no “distance set by subsection (3)”. Bylaw 18327 was passed on June 12, 2018. The Order in Council was approved June 27, 2018 as Item 222/2018 proclaiming the new Act to be in force and the new regulations, AR13/2018 were set to come into force only on proclamation of the Act. The regulation was passed but not in force until the Act was proclaimed on June 27, 2018.

- [36] The exercise the City has undertaken is in addition to and not in substitution for anything that the Province has done.
- [37] Section 105(6) of the *Gaming, Liquor and Cannabis Regulation* was one that Mr. Murphy originally thought might apply to this development permit application.
- [38] Section 105(6) states that on application by a municipality that has not by bylaw varied a [sic] distance set by subsection (3), the board may, in writing, if the board considers it appropriate to do so, vary the distance set by that subsection and set a different distance that is applicable to one or more of the types of properties referred to in subsection (3)(a) to (c) in relation to a specified premises that is the subject of a cannabis licence application.
- [39] A municipality that had not set its bylaw could do this.
- [40] A surveyor reviewed the Site Plan to determine whether or not the development complied with the 100 metres setback as required by section 105(3)(b). The City map determined that the distance from property line to property line was 73 metres. The surveyor was asked to scale the distance between the nearest point of an exterior wall on the premises to that point on the property line where the 73 metre measurement occurred. The exercise showed a distance of 48.2 metres, which, when added to the 73 metres, exceeds the minimum required 100 metres separation distance which renders it compliant with this section.
- [41] If the development permit is approved with the variance, the new requirements of section 687(3) of the *Municipal Government Act* will be met.
- [42] The revisions that occurred to section 687 of the *Municipal Government Act* that require the board to comply with the regulations are met because the proposed development, with or without the required variances, complies with Provincial regulations. The variances deal with municipal regulations that have nothing to do with Provincial regulations.
- [43] Mr. Murphy provided the following information in response to questions from the Board:
- a) The setback maps submitted by the Development Officer were referenced to illustrate that the distance calculated from the premises boundary to the parcel boundary is 121 metres.
 - b) There are three modes of measurement that can be used. The one used for this development is premises to property line as opposed to building to property line. If the measurement had been taken from premises to the wall of the school building, the measurement would be approximately 400 metres.
 - c) By changing the mode of calculation the distance is changed. Section 105(5) states that a municipality may in a land use bylaw expressly vary the distance. It has to be a

direct action and because it has to be express it also has to refer to that which is changing; it cannot happen by accident or implication by the words of the regulation.

- d) That was not possible because the regulation they were seeking to vary was not in force. The municipality can only change distances not the modes of measurement.
- e) AR 13/2018 is somewhat confusing when trying to determine the interface with the three legislative amendments to the *Municipal Government Act*. It was his opinion that it was the intent of the Province to sub-delegate authority to a municipality to change the distance but not the mode of measurement to whatever they found appropriate. Once that happened, that would become the new separation distance requirement in section 105(3). It was his opinion that the Province wanted to say that a municipality could increase the distance but not reduce it. Then it was his opinion that the Board could vary it but not below 100 metres. The way it is written today, if a municipality passed a Bylaw to change the distance they may be in acting on authority provided by the Province and that authority is capped by the amendments in Section 687(3)(a) of the *Municipal Government Act*.
- f) The floor was supposed to be 100 metres and a municipality could increase the distance but not reduce the distance below 100 metres. The regulations are imprecise because they deal with situations that cannot occur. As this is rolled out further, the Province will have to correct some of these issues.

ii) *Position of the Development Officer, Mr. I. Welch:*

- [44] Development permit applications for Cannabis Retail Sales are complicated because of the new municipal and provincial regulations that have to be considered by the Development Authority.
- [45] It was his opinion that section 104 and 105 of the *Gaming, Liquor and Cannabis Regulations* can only be varied by the Board of the AGLC Commission.
- [46] It was his opinion that the City can create the modes of measurement and establish the distance regulations in section 70 of the *Edmonton Zoning Bylaw* as long as the Provincial regulations are not loosened. Therefore, the regulations adopted by City Council are within reason.
- [47] He empathizes with the Applicant, but the regulations are in place for a reason. City Council wants to proceed cautiously with Cannabis Retail Sales. During the public consultation, 60 percent of the participants felt that this type of Use should be located more than 200 metres from a school or playground.
- [48] As a Development Authority, the question is whether or not a variance would be supported even if variance power was provided. In this case, the parking variance would

have been granted as a matter of course. The minimum required separation distance would not have been varied because the impacts of this new Use are not yet known.

[49] Variances will not be granted unless absolutely necessary because the impacts of this Use are not yet known. City Council will review the regulations in approximately one year after evidence regarding the impacts is available. Until then, only the most minor variances will be considered.

[50] It was his opinion that municipalities have been provided a significant amount of power to create regulations in addition to the minimum regulations established by the Province.

[51] Mr. Welch provided the following information in response to questions from the Board:

- a) Larger parcels of land located in the city were considered during the drafting of the bylaw but City Council still decided not to provide variance power because the impacts of this new Use are not yet known.
- b) He could not confirm whether or not an express variance has occurred but it is a legitimate question to ask because the Bylaw was passed just days before the Act was proclaimed.
- c) It was his opinion that the Board could vary the minimum required separation distance but it should be done hesitantly.
- d) He acknowledged that the mode of measurement used in this case places the Applicant at a disadvantage. However, there are two parts to a school site, the building that houses the school and the school yard. In some cases, a school has a large yard that is used by the students and he would be hesitant to grant a variance in the minimum required separation distance.
- e) A photograph was referenced to illustrate that there is no real yard on the south side of the school building. It is separated from the subject site by other buildings, a hotel and a major arterial roadway. He acknowledged that this could support granting a variance but he would be hesitant to do so because of the precedence that would be set.

iii) Rebuttal of the Appellant:

[52] The regulatory methods established in the *Edmonton Zoning Bylaw* and the Provincial regulations can co-exist and there is no conflict because of the notion of complying with the higher standard.

[53] During the public consultation, the minimum required distance would have been discussed but not the mode of measurement. The public is never canvassed about what happens in a unique situation.

- [54] As determined in the Court of Appeal decision, *Thomas*, the application of a general principle to unique circumstances sometimes lead to a ridiculous result. Consistency should not be achieved at the expense of good sense.
- [55] The City cannot wait until the impacts of a development are known; a decision has to be made when the application is submitted. Individuals have rights to develop and move forward on those rights. It is the responsibility of the Applicant to persuade the Development Authority that a variance can be granted because the test in section 687 has been met. In this case, the use, value and enjoyment of neighbouring properties will not be negatively impacted by allowing this Permitted Use or the variances required.
- [56] Section 687(3) of the *Municipal Government Act* has been modified because of the new regulations but you cannot start from a position that the separation distance cannot be varied. The test is whether or not granting the variance will be unduly impactful on the neighbourhood and neighbouring properties and in this case the setback is so large that it cannot possibly have a negative impact.

Decision

- [57] 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. 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;
 2. 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).

NOTES:

1. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Direction 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
2. Signs require separate Development Applications.
3. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in

- issuing this 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.
4. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please call 311 call Centre for further information.
 5. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- [58] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
- (a) The minimum required separation distance between the Cannabis Retail Site and any Site being used for public or private education pursuant to Section 70(2) be waived.
 - (b) The minimum required number of Parking Spaces pursuant to Section 54.2, Schedule 1(A) be waived.

Reasons for Decision

- [59] The proposed development is to change a Warehouse Sales Use to a Cannabis Retail Sales Use.
- [60] Pursuant to Section 340.2(6) of the *Edmonton Zoning Bylaw*, Cannabis Retail Sales is a Permitted Use in the CB2 General Business Zone.
- [61] The proposed development was refused because variances were required to section 54.2, Schedule 1(A)(12), the vehicular parking requirements, and section 70(2), the minimum required separation distance from a site containing a school (Amiskwacy Academy).
- [62] The Board grants the variance to section 54.2, Schedule 1(A)(12) for the following reasons:
- a) The entire site requires 118 parking spaces, 57 are provided which results in a deficiency of 61 parking spaces for the site. The proposed change in Use only requires one additional parking space.
 - b) A commercial building has been operating from this location for several years with a deficiency in the minimum parking requirements without any known complaint.
 - c) Based on the evidence provided, the Development Officer supports granting a variance in the parking requirements.

- d) The Board notes that one online response was received in opposition to the proposed development. The Board further notes that the comments provided focused primarily on the Use which is Permitted in this Zone. The Board was not persuaded that the parking concern was justified based on the reasons set out above.
- e) No evidence was provided to demonstrate that the required variance of one parking space would in any way negatively impact the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring properties.

[63] Section 70(2)(a) of the *Edmonton Zoning Bylaw* states:

Any Site containing a Cannabis Retail Sales shall not be located less than 200 metres from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:

- a. The 200 metre separation distance shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures

[64] The Board grants a variance to section 70(2)(a) of the *Edmonton Zoning Bylaw* for the following reasons:

- a) The distance between the boundary of the Site to the boundary of the school site is 73 metres which appears to be significantly deficient from the minimum required 200 metres separation distance. However, based on the evidence provided and further examination of the Site, it is clear that this is a hardship situation due to the unique nature of the lot.
- b) The school is located on Plan 922 0135, Block 6A, Lot 2, the former Edmonton Municipal Airport. The lot is in excess of 535 acres in size and based on the evidence provided by the Development Officer, is the largest parcel of land in the City of Edmonton.
- c) The school building is physically located 393 metres away from the Site of the proposed development. Furthermore, the school is separated from the proposed development by two Hotels, a parkade, an industrial zoned lot, and a major arterial roadway, Kingsway. There is significant development and distance between the site of the proposed Cannabis Retail Sales Use and the School. In fact, the physical distance between them is much greater than required by section 70(2)(a) if the school was not located on such a large lot.
- d) For these reasons, the Board finds that granting a variance to section 70(2)(a) 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.

[65] In making this decision, the Board considered all of the relevant legislation, including Section 687(3) of the *Municipal Government Act* which was recently amended to include paragraph (a.4) which states:

In determining an appeal, the subdivision and development appeal board must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

[66] As such, in making a decision, the Board must ensure that the proposed development complies with the regulations contained in the *Gaming, Liquor and Cannabis Act* respecting the location of the premises and the distances between that premises and other premises.

[67] The *Gaming, Liquor and Cannabis Regulations* (AR 143/96) were amended by AR 13/2018. Section 105 restricts the location of premises that are licenced to sell cannabis. Section 105(3) states:

For the purposes of sections 640(7), 642(5) and 687(3) of the *Municipal Government Act*, a premises described in a cannabis licence may not have any part of an exterior wall that is located within 100 metres of:

- a) A provincial health care facility or a boundary of the parcel of land on which the facility is located,
- b) A building containing a school or a boundary of a parcel of land on which the building is located, or
- c) A boundary of a parcel of land that is designated as school reserve or municipal and school reserve under the *Municipal Government Act*.

[68] Pursuant to section 687(3)(a.4) of the *Municipal Government Act*, the Board must comply with Section 105(3) of the *Gaming, Liquor and Cannabis Regulations*. Therefore, a premises described in a cannabis licence may not have any part of an exterior wall located within 100 metres of a school or a boundary of a parcel of land on which the building is located. Based on the evidence provided by the Applicant and the Development Authority, the premises in which the proposed cannabis Use will operate has an exterior wall that is located 120 metres from the closest point of the boundary of a parcel of land on which the school building is located.

[69] Therefore, the requirements of section 105(3) of the *Gaming, Liquor and Cannabis Regulations* have been met and the Board has complied with section 687.3(a.4) of the *Municipal Government Act*.

[70] Submissions were made to the Board as to whether or not the provisions of section 105(5) of the *Gaming, Liquor and Cannabis Regulations* apply to this development and if this section is triggered by section 70 of the *Edmonton Zoning Bylaw*.

[71] Section 105(5) states:

A municipality may, in a land use bylaw, expressly vary the distance set by subsection (3) and set a different distance that is applicable to one or more of the types of properties referred to in subsection (3)(a) to (c), and where a municipality has done so, subsection (3) does not apply to a premises to the extent the variation in the land use bylaw is applicable to it.

[72] Did the municipality exercise the power that was delegated in this subsection? The Board finds that it did not. Section 105(5) allows a municipality in the land use bylaw to **expressly** vary the distance set out in subsection (3). Section 70 of the *Edmonton Zoning Bylaw* does not expressly vary the distance. Section 70 instead creates a comprehensive and far reaching set of regulations that apply to Cannabis Retail Sales.

[73] It sets out separation distances for many types of uses including, Community Recreation Services, Public Lands and Public Libraries, none of which are regulated by the provincial regulation. It also creates a different regime for measuring the separation distances: the provincial regulation measures from the wall of the premises to the boundary of the lot the school is on. Section 70 of the *Edmonton Zoning Bylaw* measures from lot line to lot line.

[74] Section 105(5) only allows the municipality to vary the distance set out in section 105(3)(a) to (c). It does not allow a municipality to vary the method of distance calculation, nor does it allow the municipality to add different types of uses to those listed in section 105(3).

[75] Nowhere in section 70 of the *Edmonton Zoning Bylaw* is the distance set out in section 105(3) of the regulation even mentioned. It does not specifically vary the distances in section 105(3). It may be argued that the comprehensive set of regulations contained in section 70 implicitly vary the distances in section 105(3), but that is not what is required. Section 105(5) is clear that the section 105(3) distances must be expressly varied. They were not.

[76] The net effect of section 70 is that criteria more extensive and at times stricter than the criteria established in section 105(3) of the *Gaming, Liquor, and Cannabis Regulations* have to be met by the Applicant for Cannabis Retail Sales. The municipality has the ability to create regulations for Cannabis Retail Sales in addition to the provincial regulations and the municipality has done so in section 70 of the *Edmonton Zoning Bylaw*.

[77] So, we are left with two sets of development criteria that apply to Cannabis Retail Sales. All such applications must comply with the locational requirements in section 105(3) of the *Gaming, Liquor, and Cannabis Regulations*. Those locational requirements cannot be varied by this Board, pursuant to section 687(3)(a.4) of the *Municipal Government Act*.

- [78] In addition, an Applicant must abide by the development regulations set out in section 70 of the Edmonton Zoning Bylaw. Those criteria can be varied by this Board if the tests set out in section 687(3)(d) are met.
- [79] In this case the application does satisfy the locational requirements of section 105(3). The application does not satisfy all of the requirements of section 70 of the *Edmonton Zoning Bylaw*, but the Board has granted a variance to section 70(2)(a) for the reasons set out in paragraph 64 of this decision.
- [80] The appeal is allowed and the development is approved.

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

Board members in attendance: Mr. M. Young, Ms. S. LaPerle, Mr. R. Handa, Ms. G. Harris

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.