



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Project Number: 224991794-008
File Number: SDAB-D-17-143

Notice of Decision

- [1] On August 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 17, 2017**. The appeal concerned the decision of the Development Authority, issued on June 28, 2017, to approve the following development:

**Change the Use of a Restaurant to a Bar and Neighbourhood Pub
(100 occupants and 204 m² of Public Space) (XO Bistro and Bar).**

- [2] The subject property is on Condo Common Area (Plan 1622175), located at 10238C - 103 Street NW, within the (HA) Heritage Area Zone. The Downtown Special Area and the Capital City Downtown 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 Capital City Downtown Plan (the “Downtown Plan”);
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions with a list of comments from condominium owners; and
- An e-mail in opposition from a condominium owner.

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

- Exhibit A – A written submission from the Appellant;
- Exhibit B – Videos from Legal Counsel for the Respondent;
- Exhibit C – A copy of the Liquor Licence for XO Bistro & Bar;
- Exhibit D – Responses to the Appeal submitted by Legal Counsel for the Respondent; and
- Exhibit E - A petition in support of XO Bistro & Bar submitted by Legal Counsel for the Respondent.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”)
- [8] The Chair recognized Mr. J. Murphy, Legal Counsel for the Respondent on a preliminary matter. Mr. Murphy addressed the receipt of the written submission of the Development Officer because it was not filed in the ordinary course. Mr. Murphy did not request an adjournment to review the submission that he received just prior to the hearing but expressed concern regarding the contents of the report. The matter before the Board is whether or not the proposed use, which in his opinion is a Permitted Use, is appropriate at this location.

In his opinion, the written submission of the Development Officer does not deal with the development permit application before the Board but rather addresses the use of the establishment and the conduct of the owners. The operation of the business is a totally different matter than the acceptability of the use and is outside the purview of the Board. Mr. Murphy referenced the decision in *Dallinga v. Calgary (City)*, 1975 Alta SCAD 13 to support his opinion that the conduct of the Respondent is not a relevant consideration before the Board.

Summary of Hearing

i) Position of the Appellant, Mr. G. Isbister, speaking on behalf of Mr. K. Jesus:

- [9] Mr. Isbister and Mr. Jesus own unit 702 of the subject building. The XO Bistro and Bar is located on the main floor of their building.
- [10] The proposed development will violate section 687(3)(d)(i) of the *Municipal Government Act* because it will interfere with the enjoyment and value of neighbouring parcels of land. It will devalue the residential units in the building and negatively affect the enjoyment of residents.
- [11] Multiple noise complaints have been filed by residents while the business was operating as a Restaurant and allowing a change of use to a Bar and Neighbourhood Pub will only exacerbate the problems.
- [12] Mr. Isbister referenced the Development Officer’s written submission and noted that the development would not have been approved if the information regarding the large

amount of noise being generated by the activities on site and numerous noise complaints had been made available. This information is paramount to their appeal.

- [13] The existing development is not in keeping with policy 5.2.1.1 of the Municipal Development Plan (*The Way We Grow*) because all the windows have been covered with a tinted film so that pedestrians on the sidewalk are not able to see inside the establishment. There are no other businesses with this type of window covering in the HA Heritage Zone (“HA Zone”) and it is therefore not characteristic of the area. The tinted windows speaks to the type of Bar and Neighbourhood Pub that is being proposed.
- [14] They support the Downtown Plan and the City’s goal to increase the number of downtown residents. However, they were unable to find a residential complex that had a Bar and Neighbourhood Pub on the ground level. There are many restaurants attached to residential towers that serve alcoholic beverages similar to XO Bistro and Bar.
- [15] There needs to be a balance of what types of businesses are attached to residential towers. It was their expectation that Bars and Neighbourhood Pubs would be located in close proximity to their residence in the downtown core. However, Bars and Neighbourhood Pubs should not be part of a business model for a residential tower.
- [16] They support downtown businesses and want them to succeed but not at the expense of people who live downtown.
- [17] Section 910.7 of the *Edmonton Zoning Bylaw* (the “Bylaw”) lists a Bar and Neighbourhood Pub as a Discretionary Use in the HA Zone. In their opinion, a Bar and Neighbourhood Pub is listed as a Discretionary Use because that development is not compatible with the Permitted Use of Apartment Housing.
- [18] They discussed the appeal with neighbouring condominium owners and submitted e-mails and comments received from the Condominium Board. 30 of the 32 owners contacted supported their appeal.
- [19] They support the City’s vision to build a vibrant downtown but development permit applications need to be carefully reviewed to ensure that the developments will not negatively affect downtown residents.
- [20] Mr. Isbister and Mr. Jesus provided the following with respect to questions from the Board:
- a. The proposed development is not in keeping with the HA Zone because the tinted windows along 103 Street do not promote walkability and a pedestrian-friendly street.
 - b. The proposed change in Use should not be approved because it will be located on the ground floor of a residential tower. It will negatively impact the quality of life of the residents of the building.

- c. Many residents of the building filed complaints because they felt that the existing establishment was already operating as a Bar and Neighbourhood Pub.

ii) Position of an affected property owner in support of the Appellant, Mr. S. B. Cong:

- [21] Mr. Cong owns Unit 302 of the subject building which is located just above the XO Bistro and Bar.
- [22] His primary concern is the excessive noise that is generated by the existing business.
- [23] The business operates until 2:00 a.m. and his tenants are unable to sleep at night.
- [24] He has contacted the Condominium Association and the Edmonton Police Service (the “EPS”). He was advised that the EPS could not do much because the business has a valid business license.
- [25] In his opinion, a Bar and Neighbourhood Pub should not be allowed to operate in a residential building.
- [26] He has spoken with several other condominium owners who expressed similar concerns regarding the problems with noise and inability to sleep at night.
- [27] He took possession of his unit in January, 2017 and leased the unit on May 1, 2017. Soon after his tenants took possession, he received complaints about the excessive noise being generated by the XO Bistro and Bar.
- [28] The noise seems to emanate from the floor and the windows of the establishment.

iii) Position of the Development Officer, Ms. C. Yeung:

- [29] The proposed development will occupy one of the ground floor commercial units within a mixed-use high rise tower. The residential use fronts onto 103 Street and the residential use screens the parkade in order to provide an active streetscape.
- [30] There are eight restaurants, one bar, and one nightclub located within the same block on the west side of 103 Street.
- [31] Policy 7.9 of the Downtown Plan states that “Bars, Neighbourhood Pubs and Nightclubs are encouraged in the downtown but consider limiting concentrations to prevent overcrowding and public disturbances from concentrating in any one area”.

Policy 7.10 states that “in order to protect downtown residential areas from the impacts of Bars, Neighbourhood Pubs and Nightclubs, these uses will be controlled through zoning regulations that stipulate location and maximum size”.

However, the Downtown Plan does not define “concentration”.

- [32] After the development permit was issued she became aware of eight complaints regarding the operation of the establishment had been made to the EPS between March 11, 2017 and June 29, 2017, and that a combination of noise and Bylaw violation complaints had been filed with the City.
- [33] Ms. Yeung invited two Constables from the EPS to the hearing to provide details to the Board regarding the complaints that had been filed and investigated.
- [34] The development permit application was approved on June 28, 2017. The decision to approve the development was based on the development permit submission and information provided through telephone conversations with the Applicant. She discussed the receipt of one noise complaint with the Applicant during her review and was advised that this was a one-off situation that would never happen again.
- [35] Some of the complaints included occasions where a portion of the Public Space was converted into a dance floor, and that multiple complaints had been filed against the establishment. On July 18, 2017 she was provided with a list of violation files from the Public Safety Compliance Team containing notes, video recordings and photographs. These provided insight into the impact that the proposed Bar and Neighbourhood Pub Use would have on the surrounding residential uses, and that the nature of this establishment is a Nightclub Use, which is also a Discretionary use in the HA Zone.
- [36] Based on this information she would likely not have approved the application to operate a Bar and Neighbourhood Pub Use at this location. Further, if an application had been submitted for a Nightclub Use, she would likely not have approved the application because of the multiple noise complaints that had been filed with the EPS and Community Standards or she would have worked with the Applicant to address the noise concerns of nearby residents.
- [37] Ms. Yeung indicated that she stands by her original decision to approve the proposed development because it was made using information that was provided by the Applicant and what was available at that time.
- [38] Ms. Yeung provided the following with respect to questions from the Board:
- a. She acknowledged that section 910(4)(8)(a) of the *Edmonton Zoning Bylaw* states that “the ground floor level portion of the façade abutting a Public Roadway, other than a lane, shall be comprised of transparent, non-reflective, non-tinted and non-obscured glazing” and that a tinted film has been installed on the ground floor windows of this establishment.

This requirement was imposed as a condition on the development permit. It was her opinion that Community Standards should be notified to enforce the original condition of approval.

- b. In her opinion, the current business is operating as a Nightclub Use. A Nightclub means “development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site, in a facility where entertainment facilities take up more than 10 percent of the Floor Area.”

This Use typically has a limited menu from a partially equipped kitchen/preparation area and prohibits minors from lawfully utilizing the facility.

- [39] Five site visits were made during regular office hours and she never had any concerns regarding the business. However, after reviewing video and photographs provided by the EPS and Community Standards that were taken after regular office hours, it became clear that the business was operating as a Nightclub Use.
- [40] There is one nightclub with a maximum occupancy of 273 persons operating north of the subject site and one bar with a maximum occupancy of 250 persons operating south of the subject site on the same block.
- [41] The impact of the proposed change in Use on neighbouring property owners was considered during her review. If evidence had been provided that noise or public disturbance was a problem, attempts would have been made with the Applicant to address the problems.
- [42] City Council acknowledged the impact of Bars and Neighbourhood Pubs in the HA Zone by limiting the size to less than 100 occupants and 120 square metres of Public Space.
- [43] If more than 10 percent of the total Floor Area is being used for entertainment purposes it would be considered a Nightclub Use.
- [44] Ms. Yeung advised that Constable Williams and Constable Wong of the EPS were in attendance to provide evidence to the Board regarding the current operation of the XO Bistro and Bar.
- iv) *Position of Constable Williams and Constable Wong of the Edmonton Police Service*
- [45] Constable Williams and Constable Wong advised that they both work exclusively in the downtown core and have walked through the XO Bistro and Bar on several occasions. On those occasions it was observed that a DJ was playing live music, more than 10 percent of the Floor Area had been converted into a dance floor, bottle service was being

provided at tables, and the noise was excessive. It was clear that the business was not operating within the limits of the approved development permit for a Restaurant.

The owners were advised that they were in contravention of the approved development permit but continued to operate as a Nightclub. The EPS responded to a 20 person fight outside the establishment. They also noted that the windows are tinted and through their experience it is apparent that the tinted windows distinguish when a venue is operating as a Restaurant or as a Bar or Nightclub.

- [46] At this point the Chair acknowledged the concerns of the Constables but advised that the Board's authority is to decide whether or not the proposed change in Use from a Restaurant to a Bar and Neighbourhood Pub is compatible with surrounding land uses. There are other processes in place including the issuance of a Stop Order by the Development Compliance Branch or Community Standards to address the concerns if it is determined that the business is operating outside an approved development permit.
- [47] It was the opinion of the Constables that approving a change in Use at this location would be detrimental to the neighbourhood because it will add another Bar into the HA Zone that already has a high concentration of Bars, Pubs and Nightclubs. They questioned the benefit of adding another Bar and Neighbourhood Pub at this location.
- [48] The Constables indicated that allowing the proposed change in Use will unduly interfere with the neighbourhood and impact the use and enjoyment of residents of the mixed use tower. The Restaurant existed when the building opened and it was their opinion that the Use should remain a Restaurant. Allowing the proposed change in Use will exacerbate the problems and negatively impact the street and the HA Zone.
- v) *Position of the Respondent, Mr. J. Murphy, Legal Counsel for Mr. V. Lam, representing XO Bistro and Bar:*
- [49] A PowerPoint Presentation, marked *Exhibit B*, was used to show videos of the subject site that were taken on August 8, 2017 to provide context of the building and the location.
- [50] This is a unique development permit application because it includes two separate businesses, a Bubble Tea Room on the mezzanine level of the condominium unit and the XO Bistro and Bar on the ground level of the unit. The unit is leased to one entity that controls both businesses.
- [51] The development permit application was made in response to concerns and complaints. The Bar has been operating since the outset of the business. This portion of the facility complies with the definition of a Bar and Neighbourhood Pub Use. It is not operating as a Nightclub Use.
- [52] He acknowledged that a DJ is brought in to play music, chairs are moved and people dance in the facility on occasion.

- [53] The building is located across the street from the City Centre West parkade and on 103 Street south of Rogers Place. XO Bistro and Bar is located in the Ultima Condominium Tower.
- [54] A tinted film was placed on the southern facing windows to remedy problems created by the sun. The tinted film was also placed on the northern facing windows to screen a storage room. The Condominium Association asked the owner to install the tinted film on the windows along 103 Street to provide consistency. However, the tinted film can be removed to comply with section 910.4(8)(a) of the *Edmonton Zoning Bylaw* if required by the Board.
- [55] Kelly's Pub operates from a residential tower (The Icon) located at 10452 – 104 Street in the HA Zone. In fact, the *Edmonton Zoning Bylaw* allows that Bar as a Permitted Use for less than 100 occupants and less than 120 square metres of Public Space.
- [56] The total floor area of the subject condominium unit is 271.5 square metres on the ground floor and 60.5 square metres on the mezzanine level. If these businesses had two separate development permits, the size of the Public Space for the Bar and Neighbourhood Pub would be close to allowable as a Permitted Use.
- [57] If a DJ is brought in on occasion on the weekends, some of the tables are moved from the centre of the floor to provide room for people to dance. This is allowed in a Bar and Neighbourhood Pub provided that the space does not encompass more than 10 percent of the Floor Area. This only happens on occasion and is not a permanent situation.
- [58] A copy of the AGLC Liquor Licence for the XO Bistro and Bar, marked *Exhibit C*, was submitted to confirm that the only the main floor is licensed, minors are allowed Monday to Sunday, between the hours of 10:00 a.m. and 10:00 p.m.
- [59] Section 7.1(3)(b) of the *Edmonton Zoning Bylaw* states:

Where specific purposes or activities do not conform to any Use definition or generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that use which they consider to be the most appropriate. In such a case, the use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone.

In this case, the available Use Classes are described in section 7.4 of the *Edmonton Zoning Bylaw* and include Bar and Neighbourhood Pub, Nightclub, Restaurant or Specialty Food Service because of the Bubble Tea Parlour.

- [60] Because minors are not allowed after 10:00 p.m. a Nightclub Use could be considered. However, a full menu is offered from a full equipped kitchen and preparation area and the entertain facilities do not take up more than 10 percent of the Floor Area. The business is

operating as a Restaurant during the day and a Bar and Neighbourhood Pub in the evening in an attempt to survive and remain competitive.

- [61] In his opinion, the correct choice from the list of available Uses is Bar and Neighbourhood Pub, only because minors are prohibited from patronizing the establishment during at least some portion of the hours of operation.
- [62] The subject unit is split approximately 79/21 between the XO Bistro and Bar and the Bubble Tea Parlour and there can be no more than 100 occupants.
- [63] City Council considered the concentration of bars, neighbourhood pubs, and nightclubs in the HA Zone by limiting a Permitted Use to less than 100 occupants and less than 120 square metres of Public Space. Any application that exceeds those requirements has to be considered as a Discretionary Use.
- [64] The subject site is located across 103 Street from a parkade and south of Rogers Place which in his opinion is a reasonable location. The owners of the XO Bistro and Bar are learning how to manage the crowds from Rogers Place as are all of the other bar and nightclub owners in the area. There is a learning curve and they will become better owners and operators. He noted that the owners have never been fined.
- [65] In Mr. Murphy's opinion, the noise problems being experienced by the condominium owners in this building are related to the fact that the building transmits sound. He acknowledged that this is a problem but that it is not a land use planning problem. The only land use planning issue is whether or not a Bar and Neighbourhood Pub is appropriate for this location.
- [66] The Development Officer approved the development permit application based on a review of the information that was initially provided and only had second thoughts after information was received regarding noise complaints that had been filed.
- [67] It was noted that the only complaints filed were received from residents of the building. Mr. Murphy submitted a petition of support, containing the signatures of 22 condominium units and e-mails from two additional owners, marked *Exhibits D and E*. There is mixed support and opposition from owners who reside in the same building.
- [68] In his opinion, the concerns of the owners are related to the users of the business and not the Use itself. However, without the complaints there would be no reason to refuse this development permit application.
- [69] The neighbourhood can absorb the proposed development because of the small size of the Use.
- [70] The Condominium Bylaw of the subject building states that noise shall not exceed 65 decibels during the evening hours and 76 decibels during day time hours. To this extent, it is a private legal issue between the Condominium Association and the owners/operators

of the proposed Bar and Neighbourhood Pub. Property owners have the opportunity to address noise concerns through the Condominium Bylaws.

[71] Discussions have been held regarding the noise problems and possible solutions. The Applicant is prepared to undertake actions to mitigate the problems and is amenable to the imposition of the following conditions:

- a) That no outside speakers shall be allowed.
- b) Subwoofers associated with the sound system are not allowed on site on either a permanent or temporary basis.
- c) Reasonable steps will be taken to remove speakers from the floor, either by suspending the speakers from the ceiling or setting the speakers on isolators. The sound system speakers shall be isolated from the structure of the building.
- d) The owner shall investigate and if reasonable, install acoustic baffling systems in the ceiling.

[72] Mr. Murphy provided the following with respect to questions from the Board:

- a. The Bubble Tea Shop closes earlier than the XO Bistro and Bar.
- b. The owners would be amenable to the imposition of a condition that business activities occurring on the main floor shall not migrate to the mezzanine level of the condominium unit.
- c. The owners currently install signage at the bottom of the stairs when the Bubble Tea Shop is closed. Liquor cannot be served on the mezzanine level. The hours of operation are currently 11:00 a.m. to 11:00 p.m. but the owners may want to open earlier in the future.
- d. A DJ and dancing is allowed mostly on weekends.
- e. In his opinion, Bars and Neighbourhood Pubs are compatible with residential uses. Similar applications are being approved in other locations in the City, specifically Kelly's Pub located on 104 Street in a residential tower.
- f. City Council's vision for downtown is to provide walkable neighbourhoods. High rise buildings must have commercial space on the ground floor. This will result in the development of Restaurants and Bars because other commercial uses are limited.
- g. Different Zones have different development regulations regarding separation distances between a Bar and Neighbourhood Pub and Residential Uses.

- h. He would not be amenable to a condition limiting the hours of operation when the hours of operation of similar businesses in the area are not restricted.
- vi) *Rebuttal of the Appellants, Mr. G. Isbister and Mr. K. Jesus:*
- [73] They expect to live in close proximity to Bars and Neighbourhood Pubs because they live downtown. However, in their opinion, they should not be permitted in a residential tower.
- [74] They acknowledged Kelly's Pub is located in a residential tower. However, they noted that the residential tower (The Icon) is set back farther from the street, which increases the separation space between the Bar and Neighbourhood Pub and the condominium units. There are several more storeys between Kelly's Pub and the residential units.
- [75] They agree with the EPS Constables that the proposed change in Use could affect the quality of life of residents in the area.
- [76] They reiterated that the concerns of the Development Officer and the noise complaints are paramount to their position regarding the proposed development.
- [77] They support downtown development and want businesses to succeed but not at the expense of the quality of life for downtown residents.
- [78] Mr. Jesus and Mr. Isbister provided the following with respect to a question from the Board:
- a. They would be amenable to the imposition of all of the conditions suggested by Legal Counsel for the Respondent. It shows good will on the part of the owner to address the concerns of the residents and implement changes to resolve them.

Decision

- [79] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:
1. The sound system shall not contain subwoofers or outdoor speakers.
 2. Amplification systems (speakers) shall be isolated from the structure of the building either by using floor isolators or a non-rigid suspension system installed in the ceiling.
 3. The Applicant shall install an acoustical baffling system in the ceiling.
 4. The mezzanine level shall not operate past 11:00 p.m.

5. Entertainment facilities like a dance floor shall at no time occupy more than 27 square metres of the Floor Area.
6. The tinted film on the windows abutting 103 Street NW shall be removed.
7. 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*).
8. The maximum occupancy based on the proposed Public Space is 100 persons. Any increase in Public Space or occupancy shall require separate development approval.

Reasons for Decision

[80] Bars and Neighbourhood Pubs, for more than 100 occupants and 120 square metres of Public Space, is a Discretionary Use in the (HA) Heritage Area Zone.

[81] The proposed development complies with all of the development regulations contained in section 910.7 of the (HA) Heritage Area Zone.

[82] The issue before the Board was whether or not the proposed Discretionary Use for a Bar and Neighbourhood Pub is reasonably compatible with surrounding land Uses.

[83] Section 7.4(39) of the *Edmonton Zoning Bylaw* defines a Nightclub as:

development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site, in a facility where entertainment facilities take up more than 10 percent of the Floor Area. This use typically has a limited menu from a partially equipped kitchen/preparation area and prohibits minors from lawfully utilizing the facility. Typical uses include dance clubs, caberates, nightclubs, lounges, neighbourhood pubs and bars, beverage rooms, and cocktail lounges. This Use does not include Cannabis Lounges.

[84] Section 7.4(6) of the *Edmonton Zoning Bylaw* defines a Bar and Neighbourhood Pub as:

development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site. This Use typically has a limited menu and minors are prohibited from patronizing the establishment during at least some portion of the hours of operation. Typical Uses include neighbourhood pubs, bars, beverage rooms, and cocktail lounges. This Use does not include Cannabis Lounges.

- [85] Evidence was provided that the proposed development has a fully equipped kitchen and in addition to the sale of alcohol, the service of food is a primary purpose of the facility. The entertainment facility that is used on an occasional basis does not occupy more than 10 percent of the Floor Area and minors are allowed on the premises until 10:00 p.m.
- [86] Based on this information, the Board finds that the proposed change in Use most appropriately fits the definition of a Bar and Neighbourhood Pub, pursuant to section 7.4(6) of the *Edmonton Zoning Bylaw* and is not a Nightclub.
- [87] The primary concern of the Appellants and other affected property owners is the noise generated late into the night by the Use that is currently operating from the subject site. In their opinion, the noise will increase if the proposed Bar and Neighbourhood Pub is approved at this location.
- [88] The Board acknowledges the noise concerns of affected residents but notes that feedback from residents of the building was mixed as evidenced by the submission of a petition of support for the proposed development as well as a petition of support for the appeal. To this end the Board has imposed conditions in an attempt to mitigate the transmission of sound from the proposed Bar and Neighbourhood Pub on the ground floor to the residents of the building who reside on the lower floors of the building.
- [89] The subject site is located within the Capital City Downtown Plan (the “Downtown Plan”) and is subject to section 910, the *Downtown Special Area*. The Downtown Plan contains the following policies:
- Policy 7.9 “Bars, Neighbourhood Pubs and Nightclubs are encouraged in the Downtown but consider limiting concentrations to prevent overcrowding and public disturbances from concentrating in any one area.” and
- Policy 7.10 “In order to protect downtown residential areas from the impacts of Bars, Neighbourhood Pubs and Nightclubs, these uses will be controlled through zoning regulations that stipulate location and maximum size.”
- [90] Bars and Neighbourhood Pubs are encouraged by the Downtown Plan, subject to concentration conditions. The Board also notes that Bars and Neighbourhood Pubs with the same number of occupants as the proposed development but with a slightly smaller Public Space is listed as a Permitted Use in the (HA) Heritage Zone.
- [91] The Board finds that the proposed development does follow the directions of City Council to allow this type of Discretionary Use if consideration is given to the issue of the concentration of these types of facilities in one area.
- [92] Evidence was provided that there are other Bars and Neighbourhood Pubs and Nightclubs operating along 103 Street, in close proximity to the subject Site. However, the Board finds that any concerns regarding the concentration of these types of facilities will be mitigated given the relatively small size of the proposed development which is restricted

to 100 occupants, and the fact that the building is located across the street from the City Centre Mall and parkade,

[93] Section 910.4(8)(a) of the *Downtown Special Area* states:

The ground floor level portion of the façade abutting a Public Roadway, other than a lane, shall be comprised of transparent, non-reflective, non-tinted, non-obscured glazing.

[94] Evidence was provided by the Appellants that a tinted, reflective glaze has been installed on the windows fronting onto 103 Street.

[95] The Respondent asked the Board to consider granting a variance to section 910.4(8)(a) to allow the tinted glaze to remain on the ground floor windows that fronts 103 Street.

[96] The City's Smart Choices Program contained in the Downtown Plan identifies 8 different initiatives, specifically "to develop a more compact, walkable downtown, and transit-oriented City with improved building and site design and vibrant and engaged communities".

The Board finds that the tinted windows fronting 103 Street are not in keeping with these goals because they reduce the vibrancy and engagement that occupants of the facility have with pedestrians on the sidewalk along 103 Street. The variance has not been granted because it does not comply with the initiatives of the City's Smart Choices Program and will negatively impact the amenities of the neighborhood.

[97] Accordingly, the Board has imposed a condition on the approval that the tinted glaze that has been installed on the ground floor windows that fronts 103 Street must be removed to comply with section 910.4(8)(a) of the *Edmonton Zoning Bylaw*.

[98] With the attached conditions, the Board finds that the proposed Bar and Neighbourhood Pub is reasonably compatible with surrounding land Uses and is in keeping with the Policy Goals established by City Council in the Downtown Plan.

[99] For all of the above reasons, the appeal is denied and the development is granted subject to the conditions imposed by the Board.

Mr. I. Wachowicz, Chair
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.