

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Andy Zheng Chan v Development Authority of the City of Edmonton, 2019  
ABESDAB 10219

Date: December 18, 2019  
Project Number: 345820954-002  
File Number: SDAB-D-19-219

Between:

Andy Zheng Chan

and

The City of Edmonton, Development Authority

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### Board Members

Rohit Handa, Presiding Officer  
Vincent Laberge  
Alex Nagy  
Lyll Pratt  
Elaine Solez

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### DECISION

[1] On December 11, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 28, 2019 for an application by Andy Zheng Chan. The appeal concerned the decision of the Development Authority, issued on November 28, 2019, to refuse the following development:

**Change the Use from a General Retail store to a Cannabis Retail Sales use and to construct interior alterations.**

[2] The subject property is on Condo Common Area (Plan 0425913, 1123267, 1621940, 1922644), located at 10020 - Jasper Avenue NW, within the (CCA) Core Commercial Arts 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:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer's written submission;
  - The Appellant's reasons for appeal and additional written submissions including a petition and letter of support; and
  - A written submission in opposition from the Edmonton Public Library.

### **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, A. Chan and the property owner, T. Yu:*

- [7] The proposed development will not negatively impact the surrounding area and will not be detrimental to the neighbourhood.
- [8] The site is located in a strategic underground concourse location that cannot be seen by children and is more difficult to access. Mr. Yu owns the site which has been vacant for many years.
- [9] The proposed Cannabis Retail Sales store is one of the most suitable uses for this site. The subject location is located underground and is not visible until you descend down a flight of stairs and pass through a set of double doors.
- [10] The walking distance between the subject library and the site of the proposed Cannabis Retail Sales store is much greater than the separation distance identified by the Development Officer.
- [11] Photographs were referenced to illustrate the Cambridge Lofts building and the entrance. This is an adult-only residence that does not provide parking. Many working professionals reside in the building which is located adjacent to an LRT station.
- [12] The concerns of the Edmonton Public Library were acknowledged but the proposed Cannabis Retail Sales store is located in the downtown core and AGLC regulations prohibit children from accessing the store.

- [13] It was noted that another Cannabis business (Fire and Flower) successfully appealed a development permit application that required a larger variance in the minimum required separation distance between a public library than is required for the proposed development.
- [14] The existing Cannabis store that is within 200 metres from the subject site is located above ground and the proposed development is located underground. The existing Cannabis store faces west at street level and the proposed Cannabis store will face west on the lower concourse level of the subject site.
- [15] The proposed Cannabis store will target transit oriented customers who will have the opportunity to purchase their products while commuting to and from work.
- [16] Maps were referenced to illustrate that the walking distance door-to-door from the existing Cannabis store using either the Central LRT Station pedway or the street is more than 200 metres.
- [17] Children visiting the subject library would have to go out of their way to pass by the proposed development which is located in an underground concourse that is not visible from the library, the street or the LRT station. Advertising is restricted by AGLC regulations.
- [18] There is a liquor store located adjacent to the subject location in the underground concourse, which is also an adult-oriented use.
- [19] Mr. Chan and Mr. Yu provided the following information in response to questions from the Board:
- a. There are six commercial bays located on the lower concourse level. Two of the bays are currently vacant. A convenience store, a lunch canteen, a liquor store and a law office are currently operational.
  - b. Residents of the Cambridge Lofts will only be able to see the proposed Cannabis store if they access the LRT. The stairwell is open to the public who can access the convenience store at street level but they will only be able to access the proposed development in the pedway by going through double doors.
  - c. Both AGLC and the Development Officer were aware that the subject location was not visible from the street but they did not identify it as an issue.
  - d. Regarding the design requirements and a requirement that the exterior of all stores shall have ample transparency from the street was waived by the Board for a similar site (SDAB-D-18-152).
  - e. The concourse should be considered to be similar to a mall and visibility will be provided from the interior of the concourse into the store to comply with section 70.6(a) of the *Edmonton Zoning Bylaw*.

ii) *Position of the Development Officer, S. Chow:*

[20] Mr. Chow did not attend the hearing but provided a written submission that was considered by the Board.

**Decision**

[21] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

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

1. The minimum required 200 metres separation distance between any Cannabis Retail Sales and any other Cannabis Retail Sales pursuant to section 70(1) is reduced by 160 metres to allow a minimum separation distance of 40 metres.
2. The minimum required 200 metres separation distance between any Site containing Cannabis Retail Sales and any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales pursuant to section 70(2) is reduced by 90 metres to allow a minimum separation distance of 110 metres.

**Reasons for Decision**

[23] Cannabis Retail Sales is a Permitted Use in the (CCA) Core Commercial Arts Zone.

[24] The Appellant is seeking a variance to two of the regulations in the *Edmonton Zoning Bylaw* (the “*Bylaw*”) that relate to:

- i) the separation distance between two Cannabis Retail Sales; and
- ii) the distance of a Cannabis Retail Sales Use from a public library.

[25] In considering the Appeal, the only issue before the Board is whether the requested variances to each of the separation distances would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land (Section 687(3)(d) of the *Municipal Government Act* (“*MGA*”).

[26] The Board finds that the proposed development would not offend either prong of this test.

[27] It is important to note that the Board cannot presume harm simply because a separation distance exists, (*Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295, at para 6). The Board must rely on the evidence presented during the hearing to determine how a relaxation to the separation distances offends this Board’s test in the *MGA*.

*Separation Distance Between Two Cannabis Retail Sales*

- [28] The Board heard evidence that the proposed development is located on the concourse level of the Cambridge Lofts development. As a result of its location, there is no direct line of sight between the proposed Cannabis Retail Sales development and the previously approved development.
- [29] Moreover, the actual walking distance between the two developments would in fact exceed 200 metres. While the *Bylaw* utilizes a method of distance “as the crow flies” the Board finds that the actual separation, from a practical perspective, is large enough to address any impact of having the two Cannabis Retail Sales in close proximity to one another.
- [30] In addition, there was no opposition noted against the proposed development in relation to this separation distance. To the contrary, the Board was presented with a significant petition in favour of the development. While many of the petitioners did not reside within the typical 60-metre radius, there was no evidence presented to suggest that the people most affected by the proposed development were opposed to the development. The only evidence before the Board was that of resounding support.
- [31] Finally, the Board could not find any reasons in the Development Officer’s report that would suggest a negative impact arising from the proposed development. The Development Officer has no jurisdiction to vary this regulation in the *Bylaw*. His report was limited to outlining the limits on his authority and no additional reasons were put forward to suggest that any negative impacts would result from the development.
- [32] Therefore, the Board finds that a variance to this separation distance would not offend its test under section 687(3)(d) of the *MGA*.

*Separation Distance from a Public Library*

- [33] The Board heard similar evidence from the Appellant on the issue of the separation distance from the public library. Namely, the Board heard that the actual practical distance from the library is much greater than the distance calculated “as the crow flies”. This practical reality minimizes the impact of the proposed development being in close proximity to the library.
- [34] In addition, the location of the proposed development on the concourse level of the Cambridge Lofts mitigates against the impacts of locating a Cannabis Retail Sales Use near a public library.
- [35] There is no direct visual connection between the library and the proposed development and, in practical terms, patrons would have to go out of their way to pass by or access this site. There would be a limited opportunity for any adolescent library patrons to walk past the proposed development given its location. This mitigates against any impacts that would arise as a result of varying the separation distance as requested.

- [36] While the Board was presented with an objection from the Edmonton Public Library, the purview of the objection was general in nature, relating to Cannabis Retail Sales Uses being located near libraries in any fashion. Many of the concerns noted in that objection are addressed by the remote location of the proposed development as contemplated above.
- [37] Moreover, the Board was again not presented with anything in the Development Officer's report that would suggest an undue or material interference with the operations of the library arising from the proposed development.
- [38] Therefore, the Board finds that a variance to this separation distance would not offend its test under section 687(3)(d) of the *MGA*.

*Section 70(6) Design Requirements*

- [39] As stated previously, the proposed development is located in a concourse under the Cambridge Lofts building. The proposed development is adjacent to several other businesses on this concourse level and has direct access to the LRT station.
- [40] The Board must consider whether the proposed development satisfies the Design Requirements noted in section 70(6) of the *Bylaw*.
- [41] Section 70(6) of the *Bylaw* states [**emphasis added**]:

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:

- a. 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;
- b. the exterior of all stores shall have ample transparency from the street;
- c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
- d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

- [42] Given the remote location of the proposed development on the concourse level, the Board finds that subsections b, c, and d are inapplicable to the development. However, the Board must consider subsection a to determine if that regulation is offended by the development.
- [43] A mall is not a defined term in the *Bylaw*. Therefore, the Board should adopt a definition of a mall that a reasonable person would agree with. Using this analysis, the Board finds that a reasonable person would determine that the clustering of several businesses on the

concourse level amounts to a small mall. Given that there would be visibility from the mall into the store, the development meets section 70.6(a).

[44] In consideration of the foregoing, the proposed development will not offend this Board's test in section 687(3)(d) of the *MGA*. The Appeal is therefore allowed.

Rohit Handa, 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.*