



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

10019 – 103 Avenue NW  
Edmonton, AB T5J 0G9  
P: 780-496-6079 F: 780-577-3537  
[sdab@edmonton.ca](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)

Date: February 13, 2019  
Project Number: 294950433-001  
File Number: SDAB-D-19-011

**Notice of Decision**

- [1] On January 30, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 6, 2019**. The appeal concerned the decision of the Development Authority, issued on December 20, 2018, to approve the following development:

**To operate a Major Home Based Business (Administration office and storage of a vehicle for mechanical contractor - HIGH TECH MECHANICAL LTD.)  
Expires Dec 20, 2023**

- [2] The subject property is on Plan 1520683 Blk 10 Lot 56, located at 6155 - 175 Avenue NW, within the (RSL) Residential Small Lot Zone. The McConachie Neighbourhood Structure Plan and the Pilot Sound Area Structure 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 approved Development Permit;
  - The Development Officer’s written submission;
  - The Appellant’s written submissions, including photographs and a response to the submission received from the Respondent;
  - The Respondent’s written submissions, including vehicle registrations; and
  - One online response in support of the development submitted by the Respondent.

**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. (“*MGA*”)

### **Summary of Hearing**

*i) Position of the Appellant, Mr. L. & Mrs. A. Caouette:*

[7] It is the position of the Appellants that this Major Home Base Business permit has been issued to someone who blatantly disregards the City’s bylaws, and who has no consideration for his neighbours. This is shown by how the Respondent has broken imposed conditions within weeks of being issued the permit.

[8] Mrs. Caouette noted that the day after they took possession of their new house, the Respondent parked his white Cube Van in front of the Appellant’s driveway even though the builder had erected a large sign that read “No Parking – Occupied Residence”. They rang the doorbell at the Respondent’s house but no one answered so they called 311. Parking enforcement responded and the Van was moved so that the Appellants could move their belongings into their new house. This was the first of many issues.

[9] Photographs were referenced to illustrate that work and personal vehicles continue to block the Appellant’s driveway. The photographs further illustrated cast-iron pipes, tubes and Jacuzzis that are stored on the Respondent’s driveway, creating an unsightly mess.

[10] Vehicles have been parked in the Front Yard of the Respondents property because there is a lack of space on the driveway to do work *and* park derelict work vehicles, while also receiving deliveries from mechanical suppliers on a weekly basis. At one time, there were five (5) operating vehicles (1 Cube Van, 2 full sized work Vans and 2 personal vehicles) on Site.

[11] The Appellants explained that the situation has created undue mental stress because of the need to report violations to the City on an ongoing basis. The Appellants submitted that they should not have to be responsible for monitoring their neighbour’s activities.

[12] This type of business is not appropriate for a residential neighbourhood because of the constant comings and goings of people associated with the business. The excess noise generated by the business as well as the increased traffic and parking of business related vehicles, subsequently creating a safety hazard, further shows that this business is not appropriate for their neighbourhood.

[13] Mr. Caouette explained that he works for a mid-sized construction company and is aware of the space required to store materials for a mechanical contractor. Based on his experience, it is not feasible to run even a small mechanical company from a residence without it being visible from the outside.

[14] After the development permit was issued, the white Cube Van continued to be parked on the street, on the driveways of vacant houses and on the Respondent’s driveway every

- day. The Appellant noted that the Respondent continues to carry out this activity even though the Development Officer advised the Respondent that he was not to have this truck in the area because it was a condition imposed on the development permit approval.
- [15] Photographs were referenced to illustrate that within one day of being issued the permit, the terms and conditions of approval were violated.
- [16] Because the terms of the development have already been blatantly disregarded, it is the Appellant's fear that in the spring it will get worse as construction increases with the melting snow and mild weather.
- [17] Should the Board approve this development and this behavior continue, the only consequence that will occur is that in five years when the development permit is up for renewal it may be denied. The Appellants believed that it is not fair that they will have to deal with the impacts of this business in the meantime.
- [18] The permit was issued on December 20, 2018 and Mr. Singh admitted to parking the Cube Van at the residence after that date. It was parked near the residence everyday until January 8, 2019.
- [19] The Appellants noted that many of the signatures of support were not obtained from residents who live next door. The Appellants note that those people who signed will not have to deal with the detriment that the Respondent has caused and will cause in the future. It was also the position of the Appellants that one signature of support was obtained from the Respondent's employer and that one person signed both in support and opposition to the proposed development.
- [20] Mr. and Mrs. Caouette provided the following information in response to questions from the Board:
- a) Mrs. Caouette is currently on maternity leave and during the summer months she witnessed people who do not live in the house arriving and then leaving in a work vehicle. Larger trucks would deliver material to the Site that was then loaded into one of the smaller business vehicles.
  - b) They have witnessed people coming to the Site, dropping off vehicles and picking up work vehicles.
  - c) They moved into their house in March, 2018.
  - d) A photograph was referenced to illustrate the Respondent's white Cube Van parked in the driveway of an unoccupied house on the street. It is often parked on the street in front of houses that are currently unoccupied.
  - e) The white Cube Van is not currently parked on Site. A yellow panel Van is parked on the driveway as well as several other passenger vehicles.

- f) Some of their concerns would be addressed if the terms and conditions of the permit were respected.
- g) Wholesalers dropped off building materials at the Site on a weekly basis. Pipes would be dropped off and would sit on the driveway, blocking the sidewalk for weeks at a time.
- h) These materials were eventually loaded into the white Cube Van or the smaller yellow panel Van.
- i) The business activity is heavier during the summer months but it continues throughout the year.
- j) The yellow Van is still being parked on the driveway. Another vehicle donated to the Kidney Foundation had to be towed from the Site because it was not operational.
- k) They are concerned that the conditions imposed on the business will not be respected once the development permit is approved based on their past experience. It is not fair that they will have to live with the impacts for the next five years.

*ii) Position of the Development Officer, Mr. J. Folkman:*

[21] Mr. Folkman did not appear at the hearing and the Board relied on Mr. Folkman's written submission.

*iii) Position of the Respondent, Mr. G. Singh & Ms. R. Deol who were represented by Ms. Kaler, their translator:*

[22] Ms. Kaler, speaking on behalf of the Respondents, noted that they were not aware that the Appellants were moving into that house on the day that the Van was partially blocking the Appellant's driveway. However, the Van was moved as soon as they were made aware of the issue by parking enforcement.

[23] Ms. Kaler noted that the pipes on the driveway, illustrated in Photographs 1, 3 and 4 of the Appellants submission were delivered that day and the photographs were all taken on the same day, not on different days.

[24] The Respondent is employed by Sangam Homes, the company that built numerous houses in this neighbourhood and on this particular street. The pipes that were left on his driveway were for the house that was currently under construction located across the street. He was not at home when the delivery was made and he asked the driver to leave the pipes on his driveway rather than on the Site where the house was being constructed.

[25] On several occasions, building materials would be brought from his property to the job Site of the house that was being constructed by Sangam Homes located across the street.

- [26] As soon as his wife was notified of the complaint, the materials were moved by the end of the day.
- [27] A letter from the owner of Sangam Homes was submitted that gives permission for Mr. Singh to park any of his vehicles at any of their construction Sites at any time of day for as long as required.
- [28] The Respondents contacted other neighbours in the crescent after the appeal was filed to make sure that the commercial vehicle had not been a nuisance or impacted the other neighbours in any way. 18 signatures of support have been submitted that indicate no complaints or any issues that may have arisen due to the commercial vehicle.
- [29] Everyone in the neighbourhood was notified of the issuance of the development permit and the appeal period but only one appeal was filed.
- [30] The Respondents noted that the yellow Van is a necessary part of the business and their livelihood. His business vehicle is often parked on the street because his employer, Sangam Homes, is building several houses on this street.
- [31] Ms. Kaler spoke to Photographs 5 and 6, submitted by the Appellant to illustrate both vehicles parked on the driveway, and noted that both photos were taken the same day as the Respondent was completing a few repairs in his house. The company vehicle was parked at his house overnight because he was repairing some windows in his home and all of his tools are stored inside the vehicle. The vehicle was removed as soon as the repairs were complete.
- [32] The white Cube Van has not been parked on Site since January 6, 2019.
- [33] Ms. Kaler, for the Respondent, questioned how the Appellant could determine that one of the vehicles parked on Site was not operational and whether or not there was a larger issue involved.
- [34] Ms. Kaler noted that Mr. Singh is trying his best to work with the neighbours to resolve the problems.
- [35] The Respondents are concerned because the permitting process has taken a long time which is affecting his livelihood. He wants to continue to operate his business without causing any problems or disruption for this neighbours.
- [36] Mr. and Mrs. Singh, through Ms. Kaler, provided the following information in response to questions from the Board:
- a) The photographs of piping being stored on the driveway were taken on the same day, the day that the Enforcement Officer visited the Site. This pipe was for the house being constructed across the street.

- b) The majority of houses in this crescent were being built during the summer months and construction is now complete. He is still required to provide follow up maintenance to all of the newly constructed houses on this street.
- c) They followed the instructions of the Enforcement Officer who asked them to remove all construction materials from the driveway and to apply for a Major Home Based Business permit before September 25, 2018. The application was submitted on September 18, 2018 to comply with that request because it was never their intent to break any City bylaws.
- d) Permission to park both the white Cube Van and the yellow Van on their driveway was requested in the development permit application. However, they were subsequently advised by the Development Officer that the white Cube Van could not be parked on Site because it did not comply with the development regulations.
- e) Mr. Singh and his family moved to Edmonton from India two years ago.

[37] At this point the Presiding Officer clarified that the development permit has not yet been issued because of the appeal that was filed. The decision regarding the issuance of the development permit will be made by the Board based on the evidence provided at this hearing. A Major Home Based Business is a Discretionary Use in the (RSL) Residential Small Lot Zone and the development regulations require that the residential character of the Zone be maintained.

A Court of Appeal Decision, *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140 (“*Grewal Decision*”), has determined that any outdoor business activity of a Major Home Based Business does not conform with the criteria of that Use class. Therefore, any commercial vehicle parked on Site used for the Major Home Based Business activities, including storage, does not comply with the development regulations for that Use contained in the *Edmonton Zoning Bylaw 12800* (the “*Bylaw*”) or the *Grewal Decision*.

[38] The Respondents confirmed that the yellow Van is used in the operation of their business and that the photographs submitted are accurate in that the yellow Van continues to be parked on Site. The Respondents understand that this constitutes outdoor storage and cannot be parked on the driveway in order to comply with the *Bylaw* regulations and the *Grewal Decision*.

*iv) Position of Affected Property Owners in Support of the Respondent, Mr. G. Singh:*

[39] Mr. G. Singh lives across the street and purchased his house from Sangam Homes. He does not know the Respondent personally but notes that the Respondent has come to his house to make some minor repairs on several occasions.

[40] Sangam Homes was building a lot of houses in this area. He noted that after the construction was complete, the Respondent did not bring the white Cube Van or any building materials to the Respondent's residence that he saw.

v) *Rebuttal of the Appellant*

[41] Mr. Caouette reiterated that pipe and other building materials have been stored on the Respondent's driveway on more than one occasion. One of the submitted photographs was taken in May and the other photograph was taken in September. Mr. Caouette noted the various differences between the photos.

[42] The Appellants believed that the Respondent has shown total disrespect for the *Bylaw* regulations regarding business activities in a residential neighbourhood.

[43] The Respondent greeted them on the day that they were moving in and there was a 4 feet by 6 feet "No Parking – Occupied Residence" sign in front of their house so he questioned how the Respondents could not know that the Appellants were moving in.

[44] Contrary to the verbal evidence provided by the Respondent, the parties have never discussed the situation.

[45] Their primary concern remains the parking of the yellow Van and the storage of building materials on the Respondent's driveway.

## **Decision**

[46] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with one additional condition. The Board has imposed the following additional condition to be added to the already stipulated conditions of the Development Authority:

1. There shall be no outdoor business activity, or outdoor storage of vehicles, material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings.

## **Reasons for Decision**

[47] The proposed Major Home Based Business (Administration office and storage of a vehicle for mechanical contractor – High Tech Mechanical Ltd.) is a Discretionary Use in the (RSL) Residential Small Lot Zone.

[48] The Respondent submitted signatures of support from numerous property owners who reside within the 60 metre notification radius including one of the most affected adjacent property owners who resides immediately east of the subject Site.

- [49] Based on a review of the photographic evidence provided by the Appellant, a white Cube Van, a yellow enclosed Van and building materials have been stored on the Respondent's driveway on more than one occasion.
- [50] The Respondent confirmed that both the yellow Van and white Cube Van are not personal vehicles and are used solely for the operation of his business.
- [51] The Board acknowledges the verbal evidence provided by the Respondents confirming that the commercial vehicles are a necessary part of the business and that these vehicles are used to store tools.
- [52] Based on the evidence, the Board notes that the Development Authority advised the Respondent that only the small yellow Ford E-150 Cargo Van could be stored on Site and the development permit application was revised to remove the larger Chevrolet Express Cutaway Van from the application.
- [53] The Board acknowledges that the Applicant (Respondent) advised the Development Authority that only the smaller yellow Van would be stored on the property, and that there would be no outdoor storage and no business activities performed on Site. The development permit application was approved on that basis.
- [54] Information contained in the written submission received from the Development Authority confirms that several complaints were received from neighbours regarding the storage of contractor/business related materials on the front driveway.
- [55] The Board notes that Section 75.3 of the *Edmonton Zoning Bylaw* states:

The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located.

Based on the evidence before the Board including admissions by the Respondents, the development has generated vehicular traffic and parking in excess of that which is characteristic of RSL Zone and in contravention of Section 75.3 of the *Bylaw*.

- [56] The Board notes that Section 75.5 of the *Edmonton Zoning Bylaw* states:

There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings.

Based on the evidence before the Board, specifically photographic evidence, outdoor business activity and outdoor storage of materials associated with the business have occurred on Site in contravention of Section 75.5 of the *Bylaw*.

- [57] When determining an appeal, the Board is bound by Section 687(3)(d) of the *MGA* as well as decisions from the Court of Appeal. At paragraphs 8, 9 and 10 of the *Grewal Decision*, the Court determined the following:



## Paragraph [8]

The definition of the Major Home Based Business use class found in s. 7.3.7 of the *Zoning Bylaw* contains three central elements. First is the fundamental requirement that it involve “the use of an Approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses...”. Second, the business use must be secondary to the residential use of the building. Third, ***the business use must not change the residential character of the dwelling or accessory building.***

## Paragraph [9]

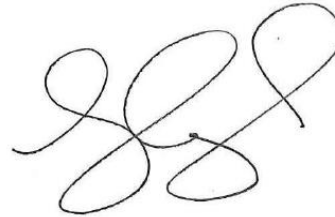
All elements of the Major Home Based Business definition refer to the use of the dwelling or accessory building, making it clear that that it is the building which must be used to conduct the business. As argued by the City, ***the Major Home Based Business use class does not capture, nor is it intended to capture, business uses that occur on the property outside an approved dwelling or accessory building.***

## Paragraph [10]

This interpretation is further reinforced by s. 75(5) of the *Zoning Bylaw*, which provides that there shall be no outdoor business activity or storage in relation to a Major Home Based Business. Although this prohibition on outdoor business activity and storage is a regulation, and regulations can be varied by the Board, a variance is only available in certain circumstances including that “the proposed development conforms with the use prescribed for that land or building in the land use bylaw”: *Municipal Government Act*, s. 687(3)(d)(ii). ***Outdoor business activity does not conform with the criteria of the Major Home Based Business use class.***

- [58] The above noted paragraphs of the *Grewal Decision* make it clear that no other portion of the Site may be used as part of the Major Home Based Business.
- [59] Based on the above, the Board finds that the proposed development, with the conditions imposed by the Development Authority, does not comply with Section 75.3 or 75.5 of the *Bylaw* or the *Grewal Decision*.
- [60] Therefore, the Board has imposed an additional condition prohibiting any outdoor business activity or outdoor storage of vehicles, material or equipment associated with the business on Site in furtherance of the *Bylaw* and the *Grewal Decision*.
- [61] The Board finds that the imposition of this condition will address the primary concerns of the Appellant and ensure that the proposed development will not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the (RSL) Residential Small Lot Zone, bringing the development into harmony with the *Bylaw* and the *Grewal Decision*.
- [62] The Board acknowledges that the Development Authority has imposed a condition that the development permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes.

[63] Based on all of the above, the Board finds that the proposed development with all of the conditions imposed 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.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. W. Tuttle, Mr. R. Hachigian, Mr. D. Fleming, Mr. J. Kindrake

c.c.

City of Edmonton, Development & Zoning Services, Attn: Mr. J. Folkman, Mr. A. Wen

**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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Date: February 13, 2019  
Project Number: 287607590-001  
File Number: SDAB-D-19-012

**Notice of Decision**

- [1] On January 30, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 7, 2019. The appeal concerned the decision of the Development Authority, issued on January 4, 2019, to refuse the following development:

To change the use of a General Retail Store to a Cannabis Retail Store

- [2] The subject property is on Plan NB Blk 2 Lot 76, located at 10279 - Jasper Avenue NW, within the CCA Core Commercial Arts Zone. The Special Area Downtown Overlay and 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:

- From the Development Authority:
  - Development Permit Application with various attachments;
  - Refused development permit with proposed plans and revised plans;
  - Map of Cannabis Retail Sales Setbacks;
  - Development Officer’s Technical Review and Written Submissions;
  - Excerpts from the Development Authority’s report to City Council on Cannabis Retail Use Amendments:
    - Attachment 2: Markup of Proposed Text Amendment to Bylaw 12800
    - Attachment 7: Public Engagement Summary
  - Cannabis Retail Sales Law and Legislation Brief.
- From the Appellant:
  - Appeal letter;
  - Petition in support of the development; and
  - Map of Cannabis Retail Sales Setbacks.

**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 Mr. Kostiw, representing the Appellant, High Tide Inc., who was accompanied by Mr. Tounian*
- [7] Mr. Kostiw referred to section 687(3)(d) of the *Municipal Government Act*, which provides the Board the ability to vary the Zoning Bylaw regulations if the proposed development would not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. There is an existing liquor store that is located closer to the school than the proposed development. The federal government has made cannabis a legal product that can be sold in a similar manner as liquor, therefore, the proposed development would not affect the neighbouring properties or businesses in any way.
- [8] In support, he referred to the Alberta Court of Appeal decision, *Newcastle Centre GP Ltd v. Edmonton (City)*, 2014 ABCA 295 [*Newcastle*], in which the Court held that it is an error for the Board to assume, without any evidence, that the Bylaw creates a presumption of harm to the public or that the Board cannot intervene and grant variances unless that presumption is rebutted by an applicant (at paras 6-7).
- [9] Since there is currently a lack of information regarding the effects of legalization, and the Bylaw does not create a presumption of harm, the Board should rely only on information currently available. In this case, High Tide Inc. operates three other cannabis stores in Edmonton, and seven across Alberta. Furthermore, the provincial requirements have been met.
- [10] The proposed development is a permitted use in the CCA Core Commercial Arts Zone. The purpose of the CCA Zone is to provide a variety of high density and quality development that accommodates a wide range of uses, including Cannabis Retail Sales. Permitting Cannabis Retail Sales in this zone shows a clear intent to encourage this type of development in the CCA Zone.
- [11] However, the current setback requirements set by Council make it difficult in a high-density area to find locations that do not infringe on these setback distances. This is contradictory to the intent of the zoning allowances and should be considered.

- [12] In *Thomas v Edmonton (City)*, 2016 ABCA 57, at paragraph 29, the Court clarified the variance powers of the Board under section 687(3)(d) of the *Municipal Government Act*:

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) are met.

- [13] He referred to SDAB-D-18-180, a previous decision of this Board, in which the Board granted a variance of 78 metres to permit a minimum required separation distance of 122 metres from another Cannabis Retail Store.
- [14] The Appellant submitted that this panel should also grant a similar variance. Page 10 of that decision outlines the reasons why the proposed development should be granted. A Cannabis Retail Sales is a Permitted Use in the CCA Zone and, with the exception of the separation distance, complies with all other development regulations.
- [15] Furthermore, in SDAB-D-18-180, the Board was provided with no evidence from either the City or affected neighbouring property owners that a reduction in the separation would interfere with the use, enjoyment, or value of neighbouring parcels of land. In this case, the Board has similarly received no opposition from neighbouring property owners or businesses.
- [16] In SDAB-D-18-180, the Cannabis Retail Store was located in the same block as a previously approved application, and yet, the development was still granted. In the subject case before this panel, there is a separation of an entire block between the two Cannabis Retail Sales Uses. In coming to its decision that the amenities of the neighbourhood would not be materially impacted, the Board in SDAB-D-18-180 accepted the evidence of the Appellant that there are a variety of Uses prevalent in the area, and that the addition of one Cannabis Retail Sales would not offend the generally accepted planning desire for diversity in the area.
- [17] Regarding the setback distance from another Cannabis Retail Sales, the two locations are located in two different commercial zones with numerous buildings obstructing the view from one to the other, facing in different directions and with major intersections separating the two. The actual walking distance is approximately 220 metres. Considering the high density of businesses and residential properties in this area, it cannot be argued that approving this particular development would result in a clustering effect. In fact, the population would be well served to have more than one location within a high density area to serve a large residential and business population. In his opinion, the proposed development will not limit diversity in the area as the proposed development is within the Commercial Core which has a variety of stores.

- [18] The Appellant conducted a form of community consultation and did not receive any opposition within the 60 metre notification radius. Neighbouring businesses provided positive feedback, though they did not submit anything in writing.
- [19] The proposed location is an existing smoking accessories store called Smoker's Corner, and would be converted to a Cannabis Retail Sales through upgrades to the interior and exterior to meet regulatory requirements. If development is denied, the long-term viability of the store could be in question, as cannabis users can be assumed to prefer to make purchases of both cannabis and accessories at the same location. To not grant a variance when appropriate, would cause harm to the business and a negative economic impact on the area. The business has operated for six years in the community without issue, and enjoys a loyal customer base that would like to see the conversion take place.
- [20] Referring to the Cannabis Retail Sales Setback Map, the Appellant clarified that one of the proposed Cannabis Retail Sales (Project 287488708-001) was withdrawn, therefore, the separation distance to that site is not a concern and no additional variance is required.
- [21] He referred to the location for the Enterprise Square branch of the Edmonton Public Library ("Enterprise Square Library") located across the street to the north of the subject Site. The Enterprise Square Library currently serves as a temporary location for the Stanley A. Milner Edmonton Public Library (the "Stanley Milner") while the latter undergoes renovation work. He spoke to the project manager for the Stanley Milner, who indicated that the Enterprise Square Library will be closed in 2020 when the Stanley Milner reopens.
- [22] The Appellant also spoke to the Enterprise Square Library Manager regarding intoxication incidences in 2018. The manager stated that intoxication is a broad term and that incidences include cases of visible intoxication from drugs and alcohol. Referring to the 2018 statistics provided by the Manager, the Appellant noted that there is no discernable pattern of incidences, and that in fact, the incidences in December (following cannabis legalization) were lower than in previous months.
- [23] Individuals using the temporary library location will not see people entering the cannabis store. Signage on the building will change and there will be window treatments to comply with the regulations.
- [24] The Appellant stated that Community Consultation was conducted with local customers and residents of the existing business who have been purchasing Cannabis accessories. Feedback from the Downtown Community League suggests that lower separation distances could enhance walkability.
- [25] The Appellant was agreeable to all the recommended conditions of the Development Authority, but proposed that one condition be revised: that the Cannabis Retail Store shall not be required to commence operations until within nine months of the AGLC moratorium on Cannabis Retail Sales licenses being lifted.

[26] Mr. Tounian stated that he has operated the existing Smoker's Corner business for the last two years. The business has walk-in customers who support his business and the proposed development. His customers are aware and are respectful of the cannabis regulations, and he makes an effort to educate customers as needed.

[27] Upon questioning by the Board, the Appellant expressed the view that the Enterprise Square building does not house a public education facility, but is in fact an entrepreneurial enterprise that seeks to provide services to its graduate students.

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

[28] The Development Authority did not appear at the hearing and the Board relied on Mr. Welch's written submission.

### **Decision**

[29] 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 not commence operations until such time as the non-medical sale and distribution of Cannabis is authorised by federal and provincial law.
2. **The Cannabis Retail Sales must commence operations within nine (9) months of the date when AGLC removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.**
3. 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.
4. 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 Directive 079, the Edmonton



- Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
  3. Signs require separate Development Applications.
  4. 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.
  5. 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 contact the 311 Call Centre for further information.
  6. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

[30] In granting the development the following variances to *Edmonton Zoning Bylaw 12800* are allowed:

1. The minimum required 200 metre separation distance between a Cannabis Retail Sales Site and a Public Library, pursuant to section 70(2), is reduced by 169 metres to permit a minimum allowed separation distance of 31 metres.
2. The minimum required 200 metre separation distance between a Cannabis Retail Sales Site and another Cannabis Retail Sales, pursuant to section 70(1), is reduced by 62 metres to permit a minimum allowed separation distance of 138 metres.

### **Reasons for Decision**

[31] The proposed development is to change a General Retail Store to a Cannabis Retail Sales Use. Cannabis Retail Sales (“CRS”) is a Permitted Use in the Core Commercial Arts Zone (“CCA Zone”). The Board has reviewed the variances required, and accepts the separation distance calculations provided by the Development Authority, that being:

- a) The proposed CRS is located 31 metres from a public library, therefore, it is deficient by 169 metres from the required 200 metre separation distance.
- b) The proposed CRS is located 138 metres from another CRS, therefore, it is deficient by 62 metres from the required 200 metre separation distance.

[32] The Board has determined that the Enterprise Square Building located directly north of the subject site is being used as a temporary location for the Stanley Milner Library (the “Stanley Milner”) during its renovation. For the purposes of this development, the Enterprise Square Building is not considered a public school, notwithstanding the development officer having identified it as such. Therefore, section 105(3)(b) of the *Gaming, Liquor and Cannabis Regulation*, Alta Reg 143/1996, does not apply.

[33] Section 105 deals with restrictions on the locations of licensed cannabis premises, stipulating the distances between those premises and certain other sensitive uses. For ease of reference, the relevant subsection is set out below:

**105(3)** 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

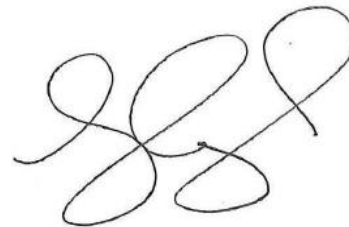
- (a) a provincial health care facility or a boundary of the parcel of land on which the facility is located,
- (b) a building containing a school or a boundary of a parcel of land on which the building is located, or
- (c) a boundary of a parcel of land that is designated as school reserve or municipal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

[34] The Board was presented with alternative measurements with respect to actual walking distances versus “as the crow flies” distances. The Board accepts the calculation by the Appellant that this location is 220 metres walking distance from the nearest approved cannabis retail location, and that walking distance may more accurately reflect the practical distances between two cannabis retail locations. However, the Board also notes that walking distance is not the measurement criteria prescribed in the Bylaw.

[35] With respect to the separation distance variance required to the Enterprise Square Library, the Board heard evidence that it is a temporary location for the Stanley Milner until construction/renovation of the Stanley Milner is completed. The Board notes that a letter was submitted from the Enterprise Square Library, identifying that it will be moving out the library component closer to the end of 2019, with the anticipated startup of the Stanley Milner in first quarter of 2020, at which time the separation distance

variance to a public library will no longer apply. The Board also notes that there was no opposition provided by the Edmonton Public Library to this application.

- [36] While the Board was presented with arguments to allow more cannabis retail use locations than prescribed in the Zoning Bylaw, it did not take a position given the lack of evidence in this subject appeal regarding the issue of clustering or an overabundance of cannabis locations. The Board was provided with no opposition either in written or oral form, but was in receipt of support from the Downtown Community League and the Downtown Business Association.
- [37] Per section 687(3)(d)(i)(B) of the *Municipal Government Act*, the Board must consider whether a proposed development would “materially interfere with or affect the use, enjoyment or value of *neighbouring parcels of land*” (emphasis added). The Board received a form of public consultation feedback, but did place great weight on this document, as it was impossible to determine whether the signors were from neighbouring parcels of land per the *Municipal Government Act*.
- [38] The Board was presented with a previous Board decision, SDAB-D-18-180, which provided for similar circumstances and variances. However, the Board is not bound by its previous decisions, and each application must be considered on its own merits. There are specific site conditions to this subject development that distinguishes this appeal from SDAB-D-18-180, and requires this Board to review the subject application on a *de novo* basis.
- [39] The Board was provided with no planning reasons that indicated that this development would unduly interfere with the amenities of the neighbourhood, nor that it would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board therefore grants the required variances, and the development is allowed.



Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance:

Mr. W. Tuttle; Mr. R. Hachigian; Mr. J. Kindrake; Mr. D. Fleming

c.c. City of Edmonton, Development & Zoning Services, Attn: Mr. Welch / Mr. Luke  
City of Edmonton, Law Branch, Attn: Mr. M. Gunther

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*