



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: January 17, 2019
Project Number: 296200574-001
File Number: SDAB-D-19-001

Notice of Decision

- [1] On January 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 9, 2018**. The appeal concerned the decision of the Development Authority, issued on December 7, 2018 to refuse the following development:

Develop a Cannabis Retail Sales.

- [2] The subject property is on Plan 6083KS Blk 14A Lot 5A, located at 7223 - 101 Avenue NW and Plan 6083KS Blk 14A Lot 5, located at 7223 - 101 Avenue NW, within the (CSC) Shopping Centre Zone. The Main Streets Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submissions.

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, J. Gill, representing Smokey's Cannabis Inc.*

- [7] Mr. Gill provided a written submission and read it verbatim.
- [8] The proposed development requires a variance in separation distance regulations of two metres.
- [9] This is an example of what the Court of Appeal referred to as a hardship situation when it recognized in *Thomas v Edmonton (City)*, 2016 ABCA 57 that there will be cases in which a strict application of the set standards could lead to an unreasonable result. To relieve against hardship, the Legislature has conferred on Subdivision and Development Appeal Boards the authority to relax—that is vary, dispense with or waive development standards in the applicable land use bylaw providing certain conditions as set out in Section 687.3(d) of the *Municipal Government Act* are met.
- [10] The proposed development is in full compliance with the locational requirements of Section 105.3 of the *Gaming, Liquor, and Cannabis Act*, AR 143/96.
- [11] The only issue is non-compliance with Section 70.2 of the *Edmonton Zoning Bylaw*. The Board is able to grant a variance if it finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. I am confident that this proposed development meets this test.
- [12] The proposed development is a permitted use in the CSC Shopping Centre Zone.
- [13] Section 70.2 of the *Edmonton Zoning Bylaw* requires a minimum 200-metre separation distance from any site being used for a public library, or for public or private education at the time of the application for the Development Permit for Cannabis Retail Sales. Under Section 70.4 of the *Edmonton Zoning Bylaw*, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store.
- [14] As opposed to using the same measurement method of “building to building” or “building to property line” as listed in the *Gaming, Liquor and Cannabis Act*, instead, the City decided that the distance would be measured from property line to property line.
- [15] It was his understanding that Section 105.5 allows a municipality to set a different distance set out by subsection 3; it does not allow them to establish a different mode of distance. With the base being 100 metres, a municipality could increase the distance but not reduce the distance below 100 metres.
- [16] Referring to the map submitted by the Development Officer, using the measurement method of the City from “property line to property line”, the premise is located 198

metres away from the closest property line of the school. This creates a deficiency of two metres when compared to the required 200-metres separation distance.

- [17] If we were to use any one of the two measurement methods listed in the *Gaming, Liquor and Cannabis Act*, the results meet both the minimum separation distance required by the municipality and provincial bylaws.
- [18] As shown on the satellite map off Google, the school is located on the far east side of the Lot and is separated from the Cannabis Retail Store by a large field, as well as 71 Street, numerous other businesses and residential housing. The signage, parking, and the customers of the Cannabis Retail Store cannot be seen from anywhere on the school property.
- [19] Using the building to building method listed in the *Gaming, Liquor and Cannabis Act*, the separation distance of the school from the premise is approximately 315 metres. This is well over the required 200 metres by the *Edmonton Zoning Bylaw*.
- [20] The Appellant provided the following responses to questions from the Board:
- a) The actual walking distance from the proposed development to the school entrance is closer to 400 metres.
 - b) There are no transit stops in front of the proposed development and students using transit would not have to walk past the proposed establishment to get to school.
 - c) He believes that Caraway School is a junior high school. One of the Board members clarified that it is an elementary / junior high school with increased parent involvement.
 - d) The Appellant has no issues with any of the Development Officer's suggested conditions other than he would like Condition No. 2 varied to state that the development must commence within nine months of the date when AGLC resumes issuing licenses. Further, the first condition is no longer relevant as of October 17, 2018.

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

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

Decision

- [22] 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 development must commence within nine (9) months of the date when Alberta Gaming, Liquor and Cannabis removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.**
2. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).

NOTES:

1. 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).
 2. Signs require separate Development Applications.
 3. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- [23] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required 200 metres separation distance between the Cannabis Retail Sales Site and a public education facility, pursuant to section 70(2) is reduced by two metres to permit a minimum allowed separation distance of 198 metres.

Reasons for Decision

- [24] The proposed development is to develop a Cannabis Retail Sales. The subject Site is located in the (CSC) Shopping Centre Zone. Pursuant to section 320.1 of the *Edmonton Zoning Bylaw* (the *Bylaw*) the general purpose of the (CSC) Shopping Centre Zone is “to provide for larger shopping centre developments intended to serve a community or regional trade area. Residential, office, entertainment and cultural uses may also be included within such shopping complexes.” Cannabis Retail Sales is a Permitted Use in this Zone.
- [25] The Board is mindful of section 687(3)(a.4) of the *Municipal Government Act* (the *Act*). This section directs that in making this decision, the Board must comply with applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act*, respecting the location of premises described in a cannabis licence and distances between those

premises and other premises. Based on the submissions of the Appellant, the Board finds that requirements of those regulations have been satisfied and this Board has met its obligation under section 687(3)(a.4) of the *Act*.

[26] The general purpose of the Main Streets Overlay is “to encourage and strengthen the pedestrian-oriented character of Edmonton’s main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.” The Board is of the opinion that the proposed Cannabis Retail Sales meets this general purpose.

[27] The issue before the Board is whether a variance of two metres should be granted in respect of the regulations in section 70(2) of the *Bylaw*. Section 70(2) requires a 200 metre separation distance between the Site of a Cannabis Retail Sales and the Site of a public education facility. The Appellant conceded that as calculated by section 70(2), this separation distance was deficient by two metres. The Development Officer cannot consider a variance in this distance per section 70(4) of the *Bylaw* which states:

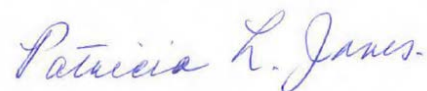
Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2) or 70(3).

However, the Board has the authority to consider a variance in this distance.

[28] The Board grants the required variance for the following reasons:

1. Caraway School was notified and did not object to this establishment. This school is an elementary / junior high school with increased parental involvement which results in greater supervision of the students.
2. The Board feels that the deficiency of two metres is de minimis and the intent of the regulation has been met. The subject Sites cannot be seen from each other and the walking distance between the two Sites is considerably more than 200 metres.

[29] The Board finds that the proposed development 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.



P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

B. Gibson, L. Delfs, S. McCartney, R. Hachigian

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

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: January 17, 2019
Project Number: 283561303-001
File Number: SDAB-D-19-002

Notice of Decision

- [1] On January 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 8, 2018**. The appeal concerned the decision of the Development Authority, issued on November 9, 2018 to approve the following development:

Construct a Single Detached House with a rear attached Garage, Uncovered Front Porch, front and rear covered patios, fireplace and Basement development (NOT to be used as an additional Dwelling), and to demolish an existing Single Detached House and rear Accessory Building.

- [2] The subject property is on Plan 3624HW Blk 9 Lot 52, located at 13608 - 110 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions and an e-mail indicating he would not be attending the hearing;
- The Respondent’s supporting materials; and
- Three e-mails in support of the development and one on-line response in support of the development.

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

- Exhibit A – An e-mail from the Respondent to the Development Officer.

Preliminary Matters

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

Summary of Hearing*i) Position of the Appellant, B. Steward*

- [8] The Appellant did not attend the hearing and the Board relied on Mr. Steward's written submission.

ii) Position of the Development Officer, E. Lai

- [9] The Development Authority did not attend the hearing and the Board relied on Ms. Lai's written submission.

iii) Position of the Respondent, C. Wagner

- [10] Mr. Wagner was accompanied by his wife. They have owned and lived in the current house on the site (built in 1953) for the past three years. They have decided to live here for the long term and would like to build a new house with a rear attached garage.
- [11] While the Development Officer stated the attached garage was for a family member with less mobility this is currently not the case. The Development Officer may have misinterpreted the following statement which was contained as part of a larger e-mail to her on August 16, 2018 (*Exhibit A*):

An attached garage will help us age in place in North Glenora by improving our mobility into and out of the house as we grow old. In the shorter term, it will provide easier access to our aging parents, who have recently moved from areas surrounding Edmonton with the expectation that their mobility will continue to decline and they will require help from us.

- [12] The Appellant was concerned that sunlight to his property would be blocked and the shadow created by this development would have a negative impact on the vegetation growing along his west property line. A comprehensive sun shadow study was presented

that showed the small shadowing impact that the proposed development would create on the Appellant's property at different times of the year (winter and summer solstices and fall and spring equinoxes). There is virtually no effect in the winter and a slight shadowing effect in the spring and fall. The greatest impact is during the summer but only for a short period of time later in the evening.

- [13] This study also showed the shadowing impact that a permitted 6.1 foot fence would have on the Appellant's property as well as the impact of existing foliage. An existing lilac bush on the subject property currently creates a significant shadow on the Appellant's property, especially in the summer when the leaves are fully out. The proposed rear attached garage would cast less of a shadow than a fully compliant two storey house in the same footprint with a permitted 6.1 foot fence and the existing foliage.
- [14] The Respondent showed a Google earth photo on which the plot plan of the proposed development had been overlaid. The size of the proposed house is roughly the same as that which currently exists on the site. The size of the proposed garage is also not significantly larger; however, the garage is being relocated. The footprint of the proposed development is in scale with the properties in the immediate vicinity.
- [15] The area taken up by the proposed rear attached garage could actually be part of the principal residence and could be two storeys with a pitched roof to match the house. It would meet all of the setback requirements and no variances would be required; however, the shadowing and massing impacts to the east neighbour would be significantly increased. In addition, a detached garage could still be built on the site with no variances required. The garage structure they are proposing is a low profile, single storey structure with floor at grade and a flat roof with no overhangs. It is only the fact that it is a rear attached garage which makes it subject to appeal.
- [16] The proposed house area covers 21.1 percent of the lot which is well below the 28 percent allowable site coverage and the garage covers 6.2 percent of the lot which is well below the 12 percent allowed.
- [17] The Mature Neighbourhood Overlay recently underwent a review by the City and the decision to not allow rear attached garages was upheld because of the following concerns:
- Large amounts of hardsurfacing in the rear yard
 - Larger structures in the rear yard
 - The rear setback not being maintained
- [18] The amount of hardsurfacing that is proposed is in line with that of their immediate neighbours as shown in a diagram reviewed with the Board. The proposed driveway is 72 feet long; the neighbour to the west has a large rear pad which is about the same size in area as this proposed driveway. The total site coverage with hardsurfacing of the proposed development is 34.2 percent, the west neighbour is 32.7 percent and the east

neighbour is 38.8 percent. This development is in keeping with the neighbourhood and complies with all regulations other than having the garage attached to the house.

- [19] The Appellant's property has a driveway in the front which is significantly smaller in area; however, the concrete on the easement between the Appellant's property and the sidewalk and the paving of the boulevard and curb cut are not included in the area shown as they are not on his site but on City property. Further, there is a pad behind the Appellant's rear shed that looks like it was once a driveway that connected the shed to the lane. The Respondent's property is virtually the same size as the Appellant's property; however, the Appellant's total site coverage including hard surfaces is significantly larger than the proposed development.
- [20] The second concern expressed in the Mature Neighbourhood Overlay is that rear attached garages are typically designed to match the style and height of the principal structure. Their proposed garage is one storey and is intentionally designed with a low profile. They have gone to the extra expense of a flat roof. The proposed attached garage is significantly smaller in mass than a pitched roof, detached garage.
- [21] The third concern of the Mature Neighbourhood Overlay is that the required rear setback would not be maintained. Their proposed development is compliant with the rear setback requirement due to the size of their yard.
- [22] They are willing to build a 6.1 foot fence to address the Appellant's concerns about viewing vehicles and hearing vehicle noise. They are also willing to plant foliage to create a privacy screen.
- [23] The Respondents reviewed the extensive design changes which were made to create the least possible impact on the neighbours and to significantly reduce the development's footprint. The garage has been put at an angle to the house to address massing concerns and also to ensure that the proposed development did not protrude past the Appellant's house. The height of the garage was lowered, the garage was designed with a flat roof and the exterior of the garage was changed from a darker colour to white to make it less imposing. The angle of the garage was changed to rotate it away from the east property line so that the opening and closing of the overhead door would not bother the adjacent neighbour. A window was added to the garage to create visual impact and reduce massing. They feel that their proposed development creates few negative impacts for any neighbours.
- [24] They reviewed the "Neighbourhood consultation journal" which showed their extensive communication with the immediately surrounding neighbours and the North Glenora Community League. No opposition was received from anyone other than the Appellant who wanted them to totally move the garage and either attach it at the front or move it to the other side of the lot. Moving the garage to the front would cause a negative impact to the walkability of the neighbourhood. Lane access is a much better option considering there are 22 children under 12 years of age in this crescent. Moving the garage to the

other side of the lot would decrease the use of the rear yard and possibly increase sun shadowing effects.

[25] A map of North Glenora was provided showing the location of all attached garages. There are significantly more rear attached garages than front attached garages. This shows that their request is not out of character for the neighbourhood.

[26] The Respondents provided the following responses to questions from the Board:

- a) The existing mountain ash tree will be removed as it is within the footprint of the proposed development. They consented to leaving the lilac bush.
- b) They are willing to build a fence between their property and the Appellant's property if required. There is currently a waist high chain link fence along this property line. The fence along the west property line is solid and is six feet in height. Most of the fences in the neighbourhood are solid fences as opposed to chain link.
- c) The proposed development does not protrude past the Appellant's house. While the Appellant would be able to see the garage from his dining room window the majority of his view would be of the Respondent's rear yard.

Decision

[27] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

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

1. Section 814.3(19) is waived to allow a rear attached Garage.

Reasons for Decision

[29] A Single Detached House is a Permitted Use in the (RF1) Single Detached Residential Zone.

[30] The Respondent addressed the reasons documented by the City for not allowing rear attached garages in the Mature Neighbourhood Overlay and showed that none of these concerns are applicable to the proposed development:

- Large amounts of hardsurfacing in the rear yard
- Larger structures in the rear yard

- The rear setback not being maintained

The Board agrees with the Respondent for the following reasons:

- a) The amount of area that will be hardsurfaced is similar to that of their immediately abutting neighbours.
- b) The area designated for the garage could have been considered as part of the principle residence and, as such could have been at least two storeys in height. However, the respondents designed a one storey, low profile garage.
- c) The proposed garage does not have any significant impact on shadowing, views, sight lines, or aesthetics and minimizes potential negative impact to the east neighbour as opposed to what could be built without the requirement of any variances.
- d) Because of the large size of the subject site the rear setback is within the minimum 40 percent requirement.

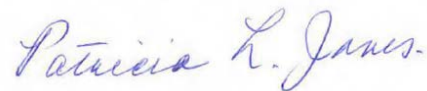
[31] The Respondent presented a sun shadow study that calculated the shadows of the proposed development and the west and east abutting houses for March 20 (8:00 A.M to 7:00 P.M.), June 21 (6:00 A.M. to 10:00 P.M.), September 23 (8:00 A.M. to 7:00 P.M.), and December 22 (9:00 A.M. to 4:00 P.M). This study indicated that slight effects from shadowing from the rear attached garage would affect the rear yard of the property to the east in the spring and fall. The effect would be greater in the summer but only in the evening hours.

[32] The Appellant raised concerns about the elimination of the view from the dining room window looking west. The proposed development is situated so that it does not protrude past the rear of the Appellant's house allowing the Appellant to have a view of the Respondent's rear yard. In addition, there is a large lilac bush on the Respondent's property which would block views of the garage, particularly in the summer when the foliage is out.

[33] The Board considered the extensive design changes made by the Respondent to address any potential negative impacts to the Appellant's property:

- a) Lowering the garage to one storey at grade with a flat roof with no overhangs.
- b) Placing the garage at an angle so the garage doors would not be visible from the Appellant's house.
- c) Providing articulation in the (east) elevation design and differentiating the colour of the garage from the house to lessen massing.
- d) Adding a window to the east side of the garage to decrease massing effects.

- e) Placing only a few small windows on the east side of the proposed development to mitigate any privacy concerns.
- [34] The Board further notes that despite the rear attached garage variance, the proposed development meets all of the other regulations of the *Edmonton Zoning Bylaw* including Height, Site Coverage, and Setbacks.
- [35] The Appellant spoke about vehicle noise and parking in the rear yard. However, the proposed development meets the minimum parking requirements and any nuisance issues related to vehicle noise and exhaust from on-site residential parking is outside the Board's purview. The Respondent is willing to put up a solid 1.85 metre fence to address these concerns, if required.
- [36] The Respondent clarified that current mobility issues of family members were not a reason for requesting a rear attached garage. Health or mobility, except in extreme circumstances, is not a factor in determining the validity of a Development Permit. The Board did not consider this reason during their deliberations.
- [37] Four on-line responses in support of the proposed development were received from adjacent property owners and there was no objection from the North Glenora Community League.
- [38] The Board finds that the proposed development 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.



P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

B. Gibson, L. Delfs, S. McCartney, R. Hachigian

cc: Development & Zoning Services – E. Lai / A. Wen
B. Steward

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