



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 16, 2019
Project Number: 308648088-001
File Number: SDAB-D-19-090

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on June 12, 2019, made and passed the following motion:

“That the appeal hearing be scheduled for July 10 or 11, 2019 at the written request from Mr. Lipton, and with verbal agreement from the Appellant.”

- [2] On July 10, 2019, the Board made and passed the following motion:

“That SDAB-D-19-090 be raised from the table.”

- [3] On July 10, 2019, the Board heard an appeal that was filed on May 22, 2019. The appeal concerned the decision of the Development Authority, issued on May 2, 2019, to refuse the following development:

**Change of Use from Health Services to Minor Alcohol Sales with a
Floor Area of 186.36 square metres**

- [4] The subject property is on Plan 1522188 Blk 1 Lot 15, located at 12847 - 50 Street NW, within the CSC Shopping Centre Zone.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submission.

Preliminary Matters

- [6] 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.

[7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “Municipal Government Act”).

Summary of Hearing

i) Position of the Appellant, Mr. Parmar, who was accompanied by Mr. Lipton, representing the landlord

[9] Mr. Lipton is speaking on behalf of the landlord of the subject Site.

[10] The building on the subject Site has three levels of rental apartments with commercial development on the main floor.

[11] They acknowledge that there are two other liquor stores within the 500 metre radius from the subject Site.

[12] Mr. Parmar operates other liquor stores and would like to expand his businesses.

[13] One of the liquor stores (Liquor Express) is on a site that is 2.36 hectares and is 182 metres away from the subject Site. The site is shy 0.14 hectares to meet the 2.5 hectares exemption as per section 85(2) of the *Edmonton Zoning Bylaw*.

[14] The other liquor store (Liquor Gallery) is 330 metres away from the subject Site and not visible from the subject Site.

[15] Although there are other liquor stores in the area, the proposed development will not be fully visible from the other liquor stores.

[16] The liquor store will lease a portion of the commercial space in the building which will attract business from the tenants.

[17] The liquor store will be easily accessible for residents in the neighbourhood and will employ residents that live in the area.

[18] Mr. Parmar and Mr. Lipton provided the following information in response to questions by the Board:

a) Liquor Express is on a site that is 2.36 hectares in size and 182 metres from the subject Site.

b) He could not confirm the size of the subject Site but believes it is less than 2.0 hectares.

- c) They confirmed that although there are other liquor stores in the area, the proposed development will not be fully visible from the other liquor stores.
- d) They did not speak to neighbouring property owners east of the subject Site. No opposition was received for the proposed development.
- e) There is pedestrian access to the subject Site. He could not confirm if there is a paved walkway accessing the subject Site.
- f) A Cannabis Retail Sales Development was contemplated for the subject premises but was never pursued fully.
- g) In their opinion, the proposed liquor store is similar to a Cannabis development and should be approved as it is a Discretionary Use.
- h) They are agreeable to the suggested conditions of the Development Officer.
- i) The trash collection and storage area were approved with the Apartment application.

ii) Position of the Development Officer, Mr. Kennedy

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

Decision

[20] 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. No loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. (Reference Section 320.4(3))
2. All outdoor service, assembly, trash collection and storage areas shall be located to the rear or sides of the principal building. (Reference Section 57.1(2))
3. Loading and trash collection facilities serving office, warehouse and similar developments, where the handling or assembly of goods is carried on within a building, shall be allowed to the rear, sides or front of the principal building. (Reference Section 57.1(2))
4. Notwithstanding the above, trash collection areas located to the front of the principal building shall be screened from view from any public roadway, including a Lane, and from any adjacent Site. (Reference Section 57.1(2))

5. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind (Reference Section 54.1(1)(c)).
6. Parking spaces for the disabled shall: be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists; be included, by the Development Officer, in the calculation of the applicable minimum parking requirement; and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards (Reference Section 54.1(3)).
7. All access locations and curb crossings shall require the approval of Transportation Services (Reference Section 53(1)).

ADVISEMENTS:

1. The Development Permit shall not be valid unless and until: any conditions of approval, except those of a continuing nature, have been fulfilled; and the time for filing a notice of appeal to the Subdivision and Development Appeal Board as specified in subsection 21(1) of this Bylaw and the *Municipal Government Act* has passed (Reference Section 17.1(1)).
2. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
3. Signs require separate Development Applications.
4. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
5. 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.

6. An approved Development Permit means that the proposed development has been reviewed against the provisions of this Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.

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

1. The restriction that any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 meters from any other Major Alcohol Sales or Minor Alcohol Sales as per section 85(1) is waived.

Reasons for Decision

[22] The proposed development, a Minor Alcohol Sales Use, is a Discretionary Use in the CSC Shopping Centre Zone.

[23] The proposed development requires a variance to the 500 metre separation distance as outlined in Section 85(1) of the *Edmonton Zoning Bylaw* that states:

“Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales.”

[24] The Board must deal with the following two main issues in making their decision:

1. Whether the proposed development is compatible with the surrounding Uses as a Discretionary Use.
2. Whether the required variance being sought will satisfy Section 687(3)(d) of the *Municipal Government Act* that states:

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

[25] The Board is satisfied that the proposed development is reasonably compatible with the neighbourhood and will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, or otherwise interfere with the amenities of the neighbourhood.

Issue No. 1

- [26] The proposed development is a Discretionary Use in the CSC Shopping Centre Zone and the Board must consider if there are any valid planning reasons to deny the Use.
- [27] When making this determination, the Board considers whether the proposed Use is reasonably compatible with the surrounding neighbourhood.
- [28] The Board heard evidence that the proposed development is located in a mixed commercial and industrial area.
- [29] Moreover, while there are residential uses flanking the subject Site, the direct line of site to the liquor store is obscured by site placement and the configuration of the building. In addition, there is no direct vehicular access to the Site from the residential areas.
- [30] The Board understands that there are two other liquor stores in close proximity to the subject Site. This suggests that Alcohol Sales Uses are prima facie reasonably compatible with the area given that other similar Uses exist nearby.
- [31] The Board heard no objection from neighbouring properties with respect to the Use and no objection was provided by the Development Officer, specifically in relation to the Use.
- [32] Therefore, the Board generally finds that Alcohol Sales Uses are reasonably compatible with the surrounding neighbourhood.
- [33] However, the Board must also consider whether the proximity to the nearby Alcohol Sales Uses affects compatibility within the area. The Board finds that it does not.
- [34] The Board arrives at this conclusion given that there is no visual connection between the three Alcohol Sales Uses and that there is no direct vehicular or pedestrian access between the sites. The Board finds that the addition of this Use would not amount to a proliferation of liquor stores in the area.
- [35] There is nothing before the Board to suggest that proximity to other Alcohol Sales Uses affects the reasonable compatibility of this specific development within the broader context of the neighbourhood.
- [36] Therefore, the Board finds that the proposed development is reasonably compatible with the neighbourhood and satisfies this Board's test in relation to Discretionary Uses.

Issue No. 2:

- [37] The Board must next consider whether the variances required satisfy the two-pronged tests in Section 687(3)(d) of the *Municipal Government Act*. That test states that this Board:

d) *may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,*

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land...

[38] The application requires a variance to Section 85(1) of the *Edmonton Zoning Bylaw* – which renders 85(2) of the *Edmonton Zoning Bylaw* inoperative. Those sections state:

(1) “Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales.”

(2) “Notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales if all the following regulations are met:

- a. the Major Alcohol Sales or Minor Alcohol Sales are located on separate Sites;
- b. the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85;
- c. and at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 hectares in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.

[39] While the Board heard evidence from the Appellant that the neighbourhood has a low income demographic, the Board notes that there are single family residential developments east of the subject Site which do not fall into that classification. The Board finds that it is not appropriate to characterize the whole area as low income.

[40] Notwithstanding this finding, the Board heard evidence from the Appellant that they own other liquor stores located within low income population areas. The Appellant submitted that the existence of their stores in those areas have had a positive effect on the residents by providing employment and economic activity.

[41] Therefore, the Board is satisfied that the existence of this Alcohol Sales Use would not have a negative impact on the neighbouring parcels of land. This sentiment is echoed by the lack of opposition before the Board regarding the proposed development and required variances.

- [42] Moreover, the Board finds that the proximity between the three liquor stores will not result in proliferation of liquor stores from a visual or practical perspective which would amount to an interference with the amenities of the neighbourhood.
- [43] Visually the liquor store is buried in a mixed commercial and residential development. The size of the liquor store is relatively small as suggested by the characterization of the development as a *Minor* Alcohol Sales Use which diminishes the perceived impact of another liquor store in the area.
- [44] The Board also heard evidence that while there are two liquor stores within the 500 metre radius from the site, neither of those liquor stores are directly visible to or from the subject site. The Board finds that by-passers in the area will not be able to see any of the liquor stores at the same time. The Board finds that the visual impact of this additional liquor store will be imperceptible.
- [45] With regard to physical separation distance, the Board finds that there is a large barrier between the subject Site and the liquor store to the North – namely 50th Street and Hermitage Road. Moreover, the Board heard that direct access from the liquor store to the South to the subject Site could only be accessed by pedestrians in a convoluted way.
- [46] The Board finds that there is sufficient physical separation from a practical perspective which lessens any alleged impact caused by the proposed development. All three would sites need to be accessed by vehicle and the Board concludes that the separations between liquor stores are sufficient to address any practical harm that may result from the Uses being in close proximity.
- [47] Therefore, the Board is satisfied that, in granting the variances, both prongs of the Section 687 test have been met.

Conclusion

- [48] Based on the foregoing, the Board is satisfied that the Development adequately addresses both of the main issues in question. Therefore, the Board allows the Appeal and grants the Development.



Mr. R. Handa, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. R. Hachigian; Mr. J. Kindrake; Mr. A. Nagy

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. C. Kennedy / Mr. H. Luke
Mr. Lipton

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.



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SDAB-D-19-106

Project Number 303824659-001

An appeal to construct an Accessory Building (tree house play structure, 4.87 metres by 3.65 metres), located at 6203 – 19A Street was **WITHDRAWN**.