

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
March 20, 2019**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I 9:00 A.M. SDAB-D-19-037

Construct an Accessory Building (detached
Garage (7.62m x 6.96m)) and to demolish an
existing Accessory Building (rear detached
Garage, 6.61m x 4.41m)

11521 - 96 Street NW
Project No.: 302932958-001

II 10:30 A.M. SDAB-D-19-038

Change the Use from a Convenience Retail
Store to Minor Alcohol Sales

11303 - 95 Street NW
Project No.: 237889353-005

NOTE: *Unless otherwise stated, all references to "Section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-037

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 302932958-001

APPLICATION TO: Construct an Accessory Building (detached Garage (7.62m x 6.96m)) and to demolish an existing Accessory Building (rear detached Garage, 6.61m x 4.41)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: February 15, 2019

DATE OF APPEAL: February 21, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11521 - 96 Street NW

LEGAL DESCRIPTION: Plan RN43 Blk 17 Lot 7

ZONE: RF3 Small Scale Infill Development Zone

OVERLAY: MNO Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

I wish to appeal the decision of the Development Authority. Given the size and height of the proposed structure the process for permitting always meant that a variance appeal would be required, and I was advised as much by the Development Officer.

On the size of the structure, even with a 2% variance to allow for the 14% footprint of the proposed garage on the site (12% allowed (Reference Section 140.4.10(a)). The 14% (20" d x 25" w) proposed structure combined with the house will still be below the 40% of building coverage allowed for in the zone (RF3). This size also keeps it within the limits with regards to property lines & neighbouring properties and as well as the

|
allowable setback. It is also commensurate with the size of other modern garages within the neighbourhood.

The proposed structure has a height at the peak of 6.1m, which exceeds the 5.8 (Reference 50.3(3)), and has a height at the midpoint of 5.8m which exceeds the 4.3m (Reference 50.3(30)). With regards to the height; there really is no way to reduce the height to the recommended measurements and still realize a building with the utility designed into it. The feasibility of this project depends on the heights as designed to maintain the function the proposed structure.

Specific reasons for the proposed structure:

The existing garage (to be demolished) has rotting walls, as they sit directly on the concrete pad. Outdated construction methods and years of water damage mean that the life cycle of the current garage is at its end, and needs to be replaced.

In contrast to a decaying structure, a new, thoughtfully designed garage will enhance the visual appeal of the back lane, and signal a vibrancy and investment in the neighbourhood. The proposed garage will require the removal of a diseased tree (on our property), and allow for some landscaping in the lane that will clean-up and renew/ enhance the lane area. A mature tree on a neighbouring property (which overhangs onto our property) will be offered to be pruned at our expense to be kept healthy and compliment the proposed garage. This tree will provide some 'green' camouflage on the north side of the building.

Because the proposed garage faces east/ west, the 20ft height should not block the sun for any neighboring properties. So there will be no negative or material affects to the neighboring properties.

The proposed garage will feature space for two full sized vehicles (where the current structure can only park one). This provides a little bit of enhanced vehicle security (we have had one vehicle broken into, and one licence plate stolen in the last 6 months), and has the added benefit of taking two cars off the street (which on 96th is one side only parking on the opposite side of the street). Other enhancements include 'motion-detector' exterior lights facing the lane (east) to discourage nocturnal activities and increase security in the general vicinity of the garage.

The proposed replacement garage will have a upper floor, that creates some additional space, that in this instance will be used for a Artists studio. This involves some drawing, painting, and other creative activities.

If need be, I would qualify these 'Creative Activities' as a 'Minor Home Based Business', insofar as the house is principally a domestic residence, has less than one business associated visit per-day, is not detectable from the exterior and has no non-resident employees. And if such thing is

desired I would be happy to apply for a business licence and home based business permit.

Electricity will be routed to the garage, while heating will be provided by a high-efficacy wood pellet stove. With the overhead lines for electricity and data being re-routed to the house via underground conduit.

The electrical system will be upgraded so that solar panels might be added at some future date if desired. [unedited]

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, [...]

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;

- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the 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;
- ...
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (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,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 140.2(10), **Single Detached Housing** is a **Permitted Use** in the **(RF3) Small Scale Infill Development Zone**.

Section 140.1 states that the **General Purpose** of the **(RF3) Small Scale Infill Development Zone** is:

to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four principal Dwellings under certain conditions, including Secondary Suites and Garden Suites.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

Under section 6.1, **Accessory** means “when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.”

Under section 6.1, **Garage** means “an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport.”

Height

Section 50.3(3) states in part: “an Accessory building or structure shall not exceed 4.3 metres in Height.

Section 52(2)(c) states:

Where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.5 metres above the maximum permitted building Height of the Zone or overlay, or in the case of a Garden Suite the maximum permitted building Height in accordance with Section 87 of this Bylaw.

Under section 6.1, **Height** means “a vertical distance between two points.”

Development Officer’s Determination

Height (to midpoint) - The Accessory Building (rear detached Garage) is 5.8m in Height, instead of 4.3m. (Reference Section 50.3(3))

Height (to peak) - The Accessory Building (rear detached Garage) is 6.1m in Height, instead of 5.8m. (Reference Section 50.3(3))

Site Coverage

Section 140.4(10)(a) states the Maximum Site Coverage shall be as follows:

	Principal Dwelling / building	Accessory building	Principal building with	Total Site Coverage
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			attached Garage	
a. Single Detached Housing – Site greater than 300 m2	28%	12%	40%	40%

Under section 6.1, **Site Coverage** means:

the total horizontal area of all buildings or structures on a Site which are located at or higher than 1.0 m above Grade, including Accessory buildings or Structures, calculated by perpendicular projection onto a horizontal plane from one point located at an infinite distance above all buildings and structures on the Site. This definition shall not include:



- a. steps, eaves, cornices, and similar projections;
- b. driveways, aisles and parking lots unless they are part of a Parking Garage which extends 1.0 m or more above Grade; or
- c. unenclosed inner and outer courts, terraces and patios where these are less than 1.0 m above Grade.

Development Officer’s Determination

Site Coverage - The Accessory Building (rear detached Garage) covers 14% of the site instead of 12%. (Reference Section 140.4.10(a))

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	Project Number: 302932958-001 Application Date: JAN 18, 2019 Printed: February 15, 2019 at 3:27 PM Page: 1 of 2																									
<h2 style="margin: 0;">Application for Home Improvement Permit</h2>																										
This document is a Development Permit Decision for the development application described below.																										
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I/We certify that the above noted details are correct. Applicant signature: _____																										
Development Application Decision Refused Issue Date: Feb 15, 2019 Development Authority: LAI, ECHO Reason for Refusal <p style="margin-left: 40px;">Height (to midpoint) - The Accessory Building (rear detached Garage) is 5.8m in Height, instead of 4.3m. (Reference Section 50.3 (3))</p> <p style="margin-left: 40px;">Height (to peak) - The Accessory Building (rear detached Garage) is 6.1m in Height, instead of 5.8m. (Reference Section 50.3(3))</p> <p style="margin-left: 40px;">Site Coverage - The Accessory Building (rear detached Garage) covers 14% of the site instead of 12%. (Reference Section 140.4.10(a))</p> Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.																										
Building Permit Decision Refused																										
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 15%;">Fee Amount</th> <th style="width: 15%;">Amount Paid</th> <th style="width: 15%;">Receipt #</th> <th style="width: 25%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Development Application Fee</td> <td>\$118.00</td> <td>\$118.00</td> <td>05598234</td> <td>Jan 18, 2019</td> </tr> <tr> <td>Building Permit Fee (Demolition)</td> <td>\$110.00</td> <td>\$110.00</td> <td>05598234</td> <td>Jan 18, 2019</td> </tr> <tr> <td>Safety Codes Fee</td> <td>\$8.80</td> <td>\$8.80</td> <td>05598234</td> <td>Jan 18, 2019</td> </tr> <tr> <td>Building Permit Fee (Accessory Building)</td> <td>\$110.00</td> <td>\$110.00</td> <td>05598234</td> <td>Jan 18, 2019</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Development Application Fee	\$118.00	\$118.00	05598234	Jan 18, 2019	Building Permit Fee (Demolition)	\$110.00	\$110.00	05598234	Jan 18, 2019	Safety Codes Fee	\$8.80	\$8.80	05598234	Jan 18, 2019	Building Permit Fee (Accessory Building)	\$110.00	\$110.00	05598234	Jan 18, 2019
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THIS IS NOT A PERMIT																										



Application for Home Improvement Permit

Project Number: **302932958-001**
Application Date: JAN 18, 2019
Printed: February 15, 2019 at 3:27 PM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	\$346.80	\$346.80		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-037



ITEM II: 10:30 A.M.

FILE: SDAB-D-19-038

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 237889353-005

APPLICATION TO: Change the Use from a Convenience Retail Store to Minor Alcohol Sales.

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: February 4, 2019

DATE OF APPEAL: February 25, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11303 - 95 Street NW

LEGAL DESCRIPTION: Plan RN43 Blk 29 Lot 1

ZONE: CB1 Low Intensity Business Zone

OVERLAY: Secondhand Stores and Pawn Stores Overlay (n/a)

STATUTORY PLAN: n/a

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

I, Nahom Weldemariam, am the owner and applicant in the above noted matter.

In December of 2018, I applied for a liquor license to Alberta Gaming and Liquor Commission (AGLC), and it is been posted on AGLC website for 21 days if there is any objections from the community on the proposed development, however there was no any objections and AGLC approved it for Minor Alcohol Sales. Although Application for Development permit was submitted on Jan 16, 2019 to the city of Edmonton and the proposed development was refused because of the reason stated on section 85.1 “ Any Major Alcohol Sales or Minor Alcohol sales shall not be located within 500 meters from any other Major Alcohol or Minor Alcohol Sales”. somewhat further distant from

the whose Permit causes our location to be offside the Regulation. Notwithstanding the obvious merit in a variance being granted to Grounds for Appeal I am required to approach the Board for assistance. Accordingly, I hereby appeal the referenced refusal on the following grounds:

1. It remains the case that:
 - a) The proposed development is a Permitted Use in the Low Intensity Business zone.
 - b) The site of the proposed development is outside of the boundary that is listed on section 85.
 - c) The proposed development is separated from the other liquor store by at least 3 blocks.
 - d) The proposed development cannot and will not unduly interfere with the amenities of the neighborhood, or materially interfere with or affect the use, enjoyment or value of neighboring parcels of land.
2. The distance between the proposed development location and the other liquor store is around 490 meters apart.
3. Notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 m 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; and
 - c) At least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.
4. As noted above, the proposed development is located in a separate site than the other Liquor Store. I also reviewed the boundary referenced in Appendix 1 to Section 85, and identified that the proposed development is outside this boundary. Finally, all three Sites with alcohol sales – including the proposed Major Alcohol Sales Use – are located on Sites greater than 2.5 hectares in size, and all are zoned CB1.

5. As the proposed development is a Permitted Use, the only issue before this Board is whether the proposed application complies with the applicable development regulations, and if not, whether a variance to any of those regulations should be granted.
6. In reference the attached maps for some of liquor stores around the city, confirms that a Minor Alcohol Sales or Major Alcohol Sales facility at approximately 200 – 300 meters apart from each other.
7. Such further and other reasons as may be presented at the hearing of this appeal.

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
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Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the 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;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (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,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 330.3(21), **Minor Alcohol Sales** is a **Discretionary Use** in the **CB1 Low Intensity Business Zone**.

Section 330.1 states that the **General Purpose** of **CB1 Low Intensity Business Zone** is:

to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall

be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

Under section 7.4(34), **Minor Alcohol Sales** is defined as “development used for the retail sale of any and all types of alcoholic beverages to the public. This Use may include retail sales of related products such as soft drinks and snack foods. The maximum Floor Area for this Use shall be no more than 275 m² per individual business premises.”

Separation Distance from Other Alcohol Sales

Section 85(1) states: “Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.”


Development Officer’s Determination

The proposed location of the Minor Alcohol Sales is located within 500 m from an existing approved Minor Alcohol Sales location.

The proposed location does not meet the criteria outlined in Section 85 to allow a variance to this regulation.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	<h2 style="margin: 0;">Application for Major Development Permit</h2>	Project Number: 237889353-005 Application Date: JAN 16, 2019 Printed: February 4, 2019 at 10:53 AM Page: 1 of 1																				
This document is a Development Permit Decision for the development application described below.																						
Applicant [REDACTED]	Property Address(es) and Legal Description(s) 11303 - 95 STREET NW Plan RN43 Blk 29 Lot 1 Specific Address(es) Suite: 1, 11305 - 95 STREET NW Entryway: 11303 - 95 STREET NW																					
Scope of Application To change the Use from a Convenience Retail Store to Minor Alcohol Sales.																						
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 352.66 </td> <td style="width: 50%; border: none; vertical-align: top;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>			Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 352.66	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)																		
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I/We certify that the above noted details are correct. Applicant signature: _____																						
Development Application Decision Refused Issue Date: Feb 04, 2019 Development Authority: KIM, JENNIFER Reason for Refusal Section 85.1 - Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales. The proposed location of the Minor Alcohol Sales is located within 500 m from an existing approved Minor Alcohol Sales location. The proposed location does not meet the criteria outlined in Section 85 to allow a variance to this regulation. Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.																						
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: right;">Receipt #</th> <th style="text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: right;">\$518.00</td> <td style="text-align: right;">\$518.00</td> <td style="text-align: right;">05594816</td> <td style="text-align: right;">Jan 16, 2019</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$518.00</td> <td style="text-align: right; border-top: 1px solid black;">\$518.00</td> <td></td> <td></td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$518.00	\$518.00	05594816	Jan 16, 2019	Total GST Amount:	\$0.00				Totals for Permit:	\$518.00	\$518.00		
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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-038

