



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Edmonton, AB T5J 0G9  
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Date: May 31, 2019  
Project Number: 308986310-001  
File Number: SDAB-D-19-070

**Notice of Decision**

- [1] On May 23, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 10, 2019**. The appeal concerned the decision of the Development Authority, issued on April 10, 2019, to refuse the following development:

**Construct exterior alterations to a Single Detached House, existing without permits (Driveway extension, 2.34 m x 8.0 m).**

- [2] The subject property is on Plan 9826312 Blk 150 Lot 27, located at 609 - Layton Court NW, within the (RF1) Single Detached Residential Zone. The Leger Neighbourhood Area Structure Plan 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 proposed site plan, and the refused Development Permit;
  - The Development Officer’s written submission;
  - The Appellant’s submissions; and
  - Two letters of support for the proposed development.

**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, R. Virani*

- [7] The driveway was widened in the summer of 2016 to provide space for their SUV. Their small garage was unable to accommodate both of their vehicles.
- [8] Mr. Virani was unaware a permit was required when the driveway was widened. The recent sale of the home brought the issue of the permit to light.
- [9] Being able to park on the driveway extension made it more convenient and safer to load / unload their infant, especially during the winter. Street parking was not always available in front of their house.
- [10] The driveway extension has been in place for three years with no issues or complaints. He reached out to three neighbours, two of whom provided a letter of support and the third sent him a text message supporting the extension. The neighbours prefer the driveway extension as street parking is freed up.
- [11] The driveway extension has no impact on anyone and looks attractive as there is landscaping on either side of it. The entire driveway was professionally installed and not patch worked.
- [12] Mr. Virani provided five previous decisions issued by the SDAB regarding similar driveway extensions, all of which were approved by the Board.

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

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

**Decision**

- [14] The appeal is **ALLOWED** and the decision of the Development Authority **REVOKED**. The development is **GRANTED**, subject to the following **CONDITION** as proposed by the Development Authority:
1. Lot grades must match the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5500 for lot grading inspection inquiries.
- [15] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- i. Section 54.1(4)(a) is waived to permit a Driveway extension that does not lead directly to the Garage.

- ii. Section 54.1(4)(c) is waived to permit an increase to the maximum allowable width of the Driveway.
- iii. Section 54.2(2)(e)(i) is waived to allow parking spaces to be located within a Front Yard in a Residential Zone.

### **Reasons for Decision**

- [16] The proposed Driveway extension is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [17] The Board accepts the photographic evidence from the Appellant that there are several similar Driveway extensions in the immediate neighbourhood and notes there was no opposition. The Board received two letters of support respecting the proposed development.
- [18] The Board accepts the submissions of the Appellant respecting street parking, mainly that the proposed development does not reduce street parking because the width of the Driveway extension is shorter than the length of a vehicle.
- [19] For the above reasons, 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.



Mr. W. Tuttle, Presiding Officer  
Subdivision and Development Appeal Board

### Board Members in Attendance:

Mr. M. Young; Ms. E. Solez; Ms. K. Thind, Mr. J. Wall

cc: Development & Zoning Services – 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: May 31, 2019  
Project Number: 309362915-001  
File Number: SDAB-D-19-071

**Notice of Decision**

[1] On May 23, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 30, 2019**. The appeal concerned the decision of the Development Authority, issued on April 26, 2019, to refuse the following development:

**Change the Use from a Personal Service Shop to Cannabis Retail  
Sales use and to construct interior alterations.**

[2] The subject property is on Plan 7722129 Blk 1 Lot 7, located at 3303 - 118 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 submissions;
- The Appellant’s written submissions;
- A letter of opposition from the Beverly Heights Community League;
- A letter of opposition from the Edmonton Public Library;
- A letter of opposition from the Candora Society;
- A letter of opposition from the Riverview Crossing Shopping Centre;
- A letter of opposition from Amazone Playzone; and
- One online response from an adjacent property owner.

**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, K. Haldane, Ogilvie LLP*

[7] The proposed Cannabis Retail Sales will occupy a small space in a strip mall at 118 Avenue and 34 Street and was refused because it does not comply with the minimum setback requirement of 200 metres from the Abbotsfield – Penny McKee Edmonton Public Library. This library is located north west of the proposed development – across both 118 Avenue and 34 Street.

[8] Mr. Haldane used an overhead view of the neighbourhood to show the location of the proposed development and the existing developments in the immediate vicinity. Each of the four corners of the intersection at 118 Avenue and 34 Street is zoned (CSC) Shopping Centre Zone (“CSC Zone”).

[9] All immediately surrounding sites are less than two hectares other than Riverview Crossing which is a mall located across 118 Avenue to the north of the subject site. The existing library will be moving from its current location to this mall in September 2019.

[10] A series of photos showing various views of the immediately surrounding area were used to provide context to the area and show:

- i. Views of both 118 Avenue and 34 Street showing they are major roads with four lanes of traffic.
- ii. The location of Riverview Crossing and other surrounding businesses.
- iii. The subject site.
- iv. The current library location close to a liquor store.
- v. A games room located near the existing library.

[11] The building-to-building distance between the Cannabis Retail Sales (located towards the east side of the subject strip mall) and the current library location is approximately 230 metres. The door-to-door measurement of the proposed development to the future location of the public library in Riverview Crossing is almost exactly 200 metres according to Google Earth.

[12] The Edmonton Police Service occupies a bay in the same strip mall as the proposed Cannabis Retail Sales and there are routinely marked police vehicles in the parking lot.

[13] Adult-oriented uses have co-existed with the library for many years. The Beverly Crest Games Room is in the same building as the library and the Beverly Crest Liquor Store occupies the same site.

[14] The General Purpose of the CSC Zone includes “the provision of larger shopping centre developments to serve a community.....”. Both Cannabis Retail Sales and Public Libraries and Cultural Exhibits are permitted in the CSC Zone along with a wide number of other permitted uses. There are no other particular regulations within section 320 of the *Edmonton Zoning Bylaw* (the *Bylaw*) regarding Cannabis Retail Sales.

[15] The reason the Development Officer was required to refuse the proposed development is found in sections 70.2(a), 70.3(a) and 70.5 of the *Bylaw*:

**70. Cannabis Retail Sales**

.....

2. Any Site containing Cannabis Retail Sales shall not be located less than:

- a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales;

.....

3. For the purposes of subsection 2:

- a. separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;

.....

5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

The Development Officer had to refuse the development as the *Bylaw* does not provide any discretion to grant a variance.

[16] An exception is made in the *Bylaw* for sites greater than two hectares in section 70.4(c).

*Sites Greater than Two Hectares*

- c. For Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:
  - i. Subsection 70(2), and 70(4)(a) shall not apply; and
  - ii. the distances referred to in Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 m.

- [17] The owners of Riverview Crossing could apply for a Cannabis Retail Sales and would be issued a permit because of the size of the site (greater than two hectares); no separation distances apply. They could locate the Cannabis Retail Sales as close as possible to the library as they choose and it would be a permitted use complying with all regulations.
- [18] In response to a question from the Board, Mr. Haldane showed the location and sizes of the other sites surrounding the proposed development. Riverview Crossing is the only site over two hectares. The subject site is just less than one hectare and the Abbotsfield - Penny McKee Library site is 1.525 hectares. The assumption is that a large site would automatically create a buffer between a Cannabis Retail Sales and a library.
- [19] Mr. Haldane referenced the *Newcastle Centre GP Ltd. v. Edmonton (City)*, 2014 ABCA 295 decision from the Court of Appeal which tells the SDAB that just because a separation distance is required in the regulations it does not mean there is a presumption of harm. If the SDAB denies a variance to separation distance it has to articulate what that harm is and must explain how there is any interference with neighbourhood amenities, or with the use, enjoyment, or value of other land parcels.
- [20] Mr. Haldane does not see any harm that would be created by allowing the Cannabis Retail Sales to operate in the proposed location and cannot see what difference it would make if it was located 121 metres further away from the library.
- [21] The City, in their written submission, state that they do not know what the impacts of this Use are and have been saying the same thing since Cannabis Retail Sales was legalized. There are currently 18 licensed retailers in Edmonton. Mr. Haldane researched Edmonton Police Service records and has been unable to find any evidence of any nuisance arising from these cannabis retail operations. There is no evidence that this Use causes any harm to anyone.
- [22] Cannabis Retail Sales is pretty inoffensive as it is highly regulated. This is an excellent location for Cannabis Retail Sales especially since police are located in the same building.
- [23] Tab 6 of the written submission contains a compilation of the population of 15 to 20 year olds within a three-kilometre radius of the current library location. Abbotsfield is



amongst the lowest. Directly next to it on the chart is Bonnie Doon. Bonnie Doon was cited as an example of the reason to take out separation distances from larger sites. It would not make sense to prevent Bonnie Doon Mall from having a Cannabis Retail Sales because there is a library there.

[24] A variance of the required separation distance from a library is required to allow Cannabis Retail Sales in this community. All of the other sites at the corner of this intersection are sterilized as they are not large enough to be exempt from the required separation distances. The only site exempt is Riverview Crossing Mall. Mr. Haldane reiterated that a Cannabis Retail Sales at this mall could be much closer to the location of the future library than the proposed development.

[25] Mr. Haldane provided the following responses to questions from the Board.

- a. Practically speaking the regulations do not make sense because the same speculative “bad thing” could happen without any variance of a regulation if the owner of Riverview Crossing applied for a Cannabis Retail Sales permit. This would be a permitted use with no variance required.
- b. The proposed development will face 118 Avenue and customer parking will be along the storefront.
- c. Unless the Board is presented with actual evidence of harm caused by varying the separation distance the Board is obligated to grant the variance as long as the test in section 687(3)(d) of the *Municipal Government Act* is met. Also, according to Professor F. Laux, you have to come up with a planning reason not to grant a variance.
- d. There are other Uses that are arguably potentially more disruptive or more harmful to youth which are already closer to the library and do not require any separation distances. If the goal is to keep at-risk youth away, the AGLC regulations and presence of the police in the same building would do a good job of this.

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

[26] The Development Authority did not appear and the Board relied on Mr. Welch’s written submissions.

*iii) Position of the Beverly Heights Community League*

[27] Mr. C. Keeler appeared to support the Community League. The Community League Board opposes the proposed development primarily due to the setback rules from a library.

- [28] Riverview Crossing contains the Amazone Playzone for children as well as many medical offices and social service organizations. This seems to be the reason why this 200-metre separation distance was established. The owner of Riverview Crossing has opposed the proposed development and has been working with the Community League to enhance the area.
- [29] Lower Rundle to the south of the proposed development is a highly populated neighbourhood and has one of the highest densities of young children in the city.
- [30] The Beverly Heights area has been somewhat challenged over the years with stigma issues and social challenges. Residents tend to have a lower income and there is a transient population. A revitalization committee has been set up and the Beverly Business Association has done a good job of attracting new businesses. The Cannabis Retail Sales in this strip mall could limit future business opportunities. As an example, some parents do not want their children to attend a daycare located in a new commercial facility on 38 Street and 118 Avenue because it is located adjacent to a bong / pipe shop.
- [31] Many people currently do not attend the library at its current location that is next to a liquor store and near a second one. They feel uncomfortable given the nature of the area and because of the concentration of loitering. This is one reason the library is moving into the mall.
- [32] A variance for this proposed development should not be granted in the Beverly neighbourhood because it already has other challenges.
- [33] Residents of the community will be served by another Cannabis Retail Sales that will be opening nearby on 118 Avenue and 44 Street.
- [34] Mr. Keeler provided the following response to questions from the Board:
- a. He has no knowledge or experience with respect to harm caused to communities due to the location of Cannabis Retail Sales.

*vi) Rebuttal of the Appellant*

- [35] The data presented under Tab 6 of his materials only reflects the demographics within a three-kilometre radius of the current library location. The move to the new location in September 2019 will likely change these numbers as the new location will be surrounded by a large parking lot and no one lives there.
- [36] A daycare is in the same building as the proposed Cannabis Retail Sales and no opposition was received from this business. Children at a daycare are 0 to 12 years of age and supervised the entire time. It is very unlikely that any of them would be able to enter the Cannabis Retail Sales. Incompatibility of use cannot be considered by the Board as

they are both permitted uses. The only issue is the variance required to the separation distance from the library.

- [37] The large roadways (118 Avenue and 34 Street) create significant buffers between the proposed Cannabis Retail Sales and the existing library.
- [38] Regarding the issue of stigma in the neighbourhood, Council is aware of this as can be seen with the Secondhand Stores and Pawn Stores Overlay which addresses these Uses in Beverly. While they clearly have the tools to do so, Council chose not to regulate Beverly any differently than other areas of the City when it comes to Cannabis Retail Sales.
- [39] Mr. Haldane has no issues with any of the suggested conditions found in the Development Officer's report.

## Decision

- [40] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following **CONDITIONS** as proposed by the Development Authority:
1. The Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
    - customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
    - the exterior of all stores shall have ample transparency from the street;
    - Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
    - Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.
  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.
- [41] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required 200-metre separation distance between a Cannabis Retail Sales Site and a Public Library Site, pursuant to section 70(2), is reduced by 121 metres to permit a minimum allowed separation distance of 79 metres.

**Reasons for Decision**

- [42] Cannabis Retail Sales is a Permitted Use in the (CSC) Shopping Centre Zone.
- [43] The Board accepts the submission of the Appellant that 118 Avenue acts as a natural physical barrier between the two Sites, namely an arterial roadway with four lanes of traffic and a boulevard that create a buffer between the Public Library and the subject Site.
- [44] Counsel for the Appellant submitted, and the Board accepts that the actual building-to-building distance between the Cannabis Retail Sales and the Public Library is between 200 and 230 metres. Similarly, this distance range would be approximately the same if a pedestrian were to walk between the Sites and cross at a marked crosswalk.
- [45] The Board accepts the submission of the Appellant respecting the *Newcastle Centre GP Ltd. v. Edmonton (City)*, 2014 ABCA 295 decision and the direction from the Court of Appeal therein. Specifically, unless the Board can **articulate** what harm can come from granting a variance, then the variance should be granted. The Board must reasonably demonstrate the negative effect the proposed variance would have on the amenities of a neighbourhood and on the neighbouring parcels of land. [Emphasis added].
- [46] The Board received written submissions of varying detail from the Edmonton Public Library, The Candora Society, Riverview Crossing Shopping Centre, Amazone Playzone and the Beverly Heights Community League as well as an in-person attendance from a representative of the Community League. While the Board considered those submissions, when they are weighed against the wisdom of the Court of Appeal in *Newcastle*, those

submissions ignored the practical realities of the subject Zone and the fact that a Cannabis Retail Sales as a Permitted Use could exist by right on the greater than two hectare Site on which the Public Library will soon move to.

- [47] Although there is no evidence that this particular Use will create nuisance issues for the neighbourhood, the Board accepts the submission from the Appellant that the Edmonton Police Service operates a satellite branch in close proximity in this same building and their presence is a mitigating factor at the subject Site for any potential nuisance issues. Further, based on the evidence, the Board finds that there are several adult-oriented Uses next to the existing Public Library which arguably have more of an impact than the proposed Cannabis Retail Sales across 118 Avenue.
- [48] All told, the Board was provided with no substantive planning reasons from any parties in opposition 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 variance, and the development is allowed for the foregoing reasons.



Mr. W. Tuttle, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young; Ms. E. Solez; Ms. K. Thind, Mr. J. Wall

cc: Development & Zoning Services – Mr. I. Welch / Mr. H. Luke  
Mr. C. Keeler – Beverly Heights Community League

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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.
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