



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: December 6, 2018
Project Number: 294520166-001
File Number: SDAB-D-18-192

Notice of Decision

- [1] On November 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 2, 2018**. The appeal concerned the decision of the Development Authority, issued on October 5, 2018, to approve the following development:

Change the Use from General Industrial to an Automotive and Equipment Repair Shop.

- [2] The subject property is on Plan 3447TR Blk 12 Lot 1A, located at 5605 - 99 Street NW, within the (IM) Medium Industrial Zone.
- [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 submission including photographs; and
 - Two on-line responses in support of the proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair 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, Mr. R. Colistro, representing Colistro Chronopoulos LLP on behalf of Condominium Corporation No. 1024965:*

[7] The Condominium Corporation manages a two storey building located east of the subject site. There are 12 professional service based businesses located in the building, including accountants and insurance agents. All of the owners have invested significant time and money in the development of the building.

[8] Many of the units are owner occupied and the owners take pride in maintaining a high quality aesthetically pleasing building.

[9] None of the businesses located in the building require outdoor business activity or generate excessive noise.

[10] The owners are concerned about the negative impact that the proposed change in use will have on their business, the enjoyment of their property and ultimately property values.

[11] The mere fact that an Automotive and Equipment Repair Shop is included on the listed uses for the (IM) Medium Industrial Zone does not mean that the use should be approved at this location. There is a reason that Council chose not to include it as a permitted use in this zone.

[12] It is the role of the Development Authority and the Board to review and assess the proposed use itself and not the user. It was noted that limited information was provided to the Board regarding the proposed use of the site. It was his opinion in reviewing the information received from the Development Officer that too much emphasis was placed on the user and not the proposed use.

[13] Pursuant to section 7.4(4) of the *Edmonton Zoning Bylaw*, Automotive and Equipment Repair Shops is defined as:

development used for the servicing and mechanical repair of automobiles, motorcycles, snowmobiles and similar vehicles or the sale, installation or servicing or related accessories and parts. This Use Class includes transmission shops, muffler shops, tire shops, automotive glass shops, and upholstery shops. This Use does not include body repair and paint shops.

Based on a review of the development permit application, the proposed development fits this definition.

[14] It was noted by the Development Officer as part of the justification for approving the proposed development that the Automotive and Equipment Repair Shop Use is reasonably compatible with the surrounding developments because the business activity is for the sale, rental and installation of vehicle accessories. It does not include repair of vehicles which typically requires some outdoor storage of vehicles. The Applicant stated

that there would be no outdoor business activity on the development permit application form. Therefore, the Development Officer determined that the impact on surrounding properties would be less than that of the previous business that included an outdoor storage area.

- [15] However, if the proposed change in use is approved it will allow servicing and mechanical repair of automobiles, motorcycles, snowmobiles and similar vehicles which will require outdoor storage. The proposed development has been approved without a condition that would prohibit outdoor business activity or storage.
- [16] It was his opinion that if the proposed use had been considered more generally and not just on the user, it could have resulted in a different decision. The Development Officer did not fully review the potential activities that can occur on the site as a result of the proposed change in use.
- [17] The Applicant does not have the inherent right to have the development permit approved just because the proposed development is a discretionary use in the (IM) Medium Industrial Zone.
- [18] A number of appeals regarding discretionary uses have been before the Board as well as the Court of Appeal. However, a formal test has not been adopted. A test to consider when reviewing a Discretionary Use should be based on solid planning principles.
- [19] In this case you have to look beyond the intended use of the site by this Applicant and consider how the site could be used by others in the future. If the Board approves the proposed change in use, that use stays with the land, not this Applicant. This could result in the site being used as a servicing and mechanical repair shop that requires outdoor storage and would have a much greater impact on surrounding developments.
- [20] Photographs of the Appellant's property were referenced to illustrate the state of the building which has a modern and clean appearance with no outdoor storage. Photographs were also referenced to illustrate that the subject site is surrounded by numerous high quality office buildings, located west of 99 Street across from the subject site.
- [21] There are no businesses operating in close proximity that include outdoor business activity and storage.
- [22] Photographs taken from the second storey windows of the Appellant's condominium building were referenced to illustrate the state of the subject site and the fence located between the two properties. The subject site contains the main building, an accessory building, a parking lot and a large area that is fenced and has been used for outdoor storage by previous owners. There is some debris on the site, including a truck canopy. It was noted that this material may not be associated with the proposed business but it illustrates how the site could be used.

- [23] The business that previously operated from this site stored old damaged car parts in the storage area on site and caused damage to the fence between the two properties. It was noted that this may not be a problem as a result of the proposed change in use but it does illustrate that there is some potential for conflict.
- [24] Condominium Corporation No. 1024965 has the greatest exposure to the subject site and therefore, will be most affected by the possible negative impacts of the proposed change in use.
- [25] Screening has been erected on the subject site abutting 99 Street that limits the view from vehicles travelling along 99 Street.
- [26] The subject site is located on 99 Street which is a major thoroughfare. It is therefore desirable to make efficient use of the land and encourage development that is aesthetically pleasing. It was his opinion that approving a use that encourages inefficient use of land is not reflective of how development should progress in this area.
- [27] It is difficult to determine by looking at the photographs but the subject property does slope towards the Appellant's site. During a heavy rainfall or when the snow is melting, run-off occurs onto the Appellant's property. The storage of vehicles in need of repair on the site could result in the leakage of oil or other liquids that may cause environmental impacts.
- [28] The owners of the Condominium Corporation are concerned about an excessive amount of noise that could result from the operation of an automotive repair shop on the subject site because it is not compatible and could impact the operation of their businesses, the enjoyment of their property and affect property values.
- [29] It was noted that two of the properties that provided support for the proposed development are located west of the subject site, across 99 Street, and will not be directly impacted by the proposed development.
- [30] In justifying the approval of this development, the Development Officer referenced the South-East Industrial Area Outline Plan. It was somewhat flawed for the Development Officer to look to this for guidance. However, this Plan was approved by Council in 1975 and many changes have occurred since then. Section 3, A.1 of the Plan states that the primary objective of the development concept is to establish the general format for future industrial development in the area over a 15 year period of time. It was not intended to extend to 2018. The Plan has not been revised and the intention of the Plan was not to extend for this period of time.
- [31] When the Outline Plan was adopted, the subject site was zoned M-1 and a Servicing and Repair Establishment was a permitted use. However, a definition for that use was not contained in the report received from the Development Officer and the old Bylaw is no longer accessible. There were some performance standards associated with that use that

had to be met before the permit could be issued, including preventing noise and odours from emanating beyond the building.

- [32] Although there was reference to a similar use being a permitted use, Council amended the *Edmonton Zoning Bylaw* at some point after the Outline Plan was adopted so that an Automotive and Equipment Repair Shop became a discretionary use. It was his opinion that this is the strongest signal that you could get from Council. Therefore, the Board should take pause before approving these types of uses, if anything, because Council had concerns about the development of properties into Automotive and Equipment Repair Shops.
- [33] In the context of a discretionary use application it is important to consider the wide range of possible uses in order to determine the impact of the approval. In this case, the development permit was approved without conditions and allows a use that is not supported by sound planning principles.
- [34] Mr. Colistro provided the following information in response to questions from the Board:
- a) The major concern is that there is the potential for a transmission or mechanic shop to move onto the subject site. These businesses use noisy equipment that could generate excessive noise and there is also the potential that oil or other fluids from vehicles stored on the subject site could leak into the Appellant's site because of the slope.
 - b) The submitted photographs were taken from a second storey window of the condominium building looking down onto the subject site. Therefore, from a positional perspective it does appear that the Appellant's site is higher than the subject site but that is not the case at ground level.
 - c) It was his assumption that renovations are occurring on the subject site which does appear to be vacant. At one point Polar Spas operated from this location. During the past year it appeared that an electrical contractor had moved onto the site.
 - d) It was acknowledged that the subject site is bordered by different zones, including (IB). In this case the proposed development is a discretionary use in the (IM) Zone and some consideration has to be given to overall planning principles and how it will affect the area as a whole. The fact that the zones are different means there are different types of uses, but it does not impact the need to consider the overall impact.
 - e) Although the Appellant's site is bordered by properties that are zoned (IM) and (IH), the reality of the situation is that the majority of development along the 99 Street corridor is comprised of office buildings rather than industrial uses that require outdoor storage.
 - f) When the general purpose of the (IM) Zone is read as a whole, it is not conclusive that a development that generates noise and requires outdoor storage was

- contemplated for this site, at least for a discretionary use. The development would have to be reviewed based on the impact on the existing surrounding uses.
- g) There are office buildings located west of the subject site on 99 Street, an office building to the east and a print shop to the south, which is a large storefront type business. There are no smaller buildings with large storage yards located in this area.
 - h) An aerial photograph was referenced to identify the location of the subject site's main building and accessory building.
 - i) The Board should consider the nature of the proposed discretionary use and how it impacts surrounding development based on planning principles. If you only focus on this business and it vacates the site, something else that fits the use class but has more of a negative impact on surrounding development can come onto the site and the adjacent property owners have no recourse.
 - j) The noise levels from 99 Street have not been measured. The Appellant's building is setback from 99 Street, which is a major roadway but there is some type of vehicle noise. However, the type of noise that could be generated by an Automotive and Equipment Repair Shop would far exceed any street noise and create a nuisance for businesses operating from the condominium site.
 - k) Access to the subject site is directly off 99 Street and access to the Appellant's site is located further north on 99 Street. All of the condominium units are orientated towards 99 Street.
 - l) The imposition of conditions on the development permit that prohibits outdoor business activity and outdoor storage would alleviate some of the Appellant's concerns. However, it is sometimes difficult to motivate Bylaw Enforcement to enforce the conditions.
 - m) The Appellant's property was registered in 2002 but he could not confirm when the Appellant's building was constructed.

ii) Position of the Respondent, Mr. M. Chipchura, representing Racks for Cars:

[35] Mr. Chipchura is the Managing Director of Racks For Cars, a family owned business, that has been operating for more than 30 years from two other locations in the city, one in the west end and one on the south side. This will be the third location.

[36] Nine family members currently work between both locations.

- [37] He has been looking for a site to expand the business for the past several years and has attempted to secure this site on two different occasions. A conditional agreement has been reached with the owner pursuant to the approval of the development permit.
- [38] The interior of the main building on the site has been renovated with high end professional finishings.
- [39] It was difficult to find the appropriate use class for their business and it was determined that an Automotive and Equipment Repair Shop was the most appropriate. However, the servicing and mechanical repair of vehicles is not part of their business operations. Racks for Cars sells and installs high end automobile accessories, specifically rack systems to transport bicycles, skis, snowboards, canoes, luggage, and ski boxes. This site will be used as a retail location for their business that currently offers the largest selection of car racks in Canada.
- [40] He agrees with the Appellant that an Automotive and Equipment Repair Shop has a negative connotation but the concerns are not justified. Racks for Cars is currently operating from two other locations in the city and if you visit either site you will see clean attractive developments where there is no outdoor storage and the majority of business activity occurs inside the building. On occasion some customer interaction occurs outside but all of the products are installed in an interior installation bay.
- [41] Their customers expect a clean, professional business and that is what is planned for this site. A total exterior renovation is planned for the main building on this site which is in disrepair. The site will be graded and paved and the fencing will be replaced.
- [42] The building is approximately 4,000 square feet in size. Most of the floor space will be used to display products and the balance will be used for office and storage space.
- [43] It was his opinion that the proposed development is compatible with neighbouring properties. There is a diverse range of businesses surrounding the site, including a veterinary clinic, the administrative office for PCL Construction, a tire shop, a wedding rental shop, and a game store.
- [44] The business will not create a nuisance for surrounding property owners. There are 14 parking spaces available on the site which was one of the main attractions when they were considering the purchase because on-site parking for employees as well as their customers is available.
- [45] Their business is retail oriented and is not a repair shop, such as a mechanic, a muffler shop or a tire shop. Customers will come to purchase vehicle accessories that will be installed at the customer's request.
- [46] The photographs submitted by the Appellant showed some items being stored on the subject site. However, these belong to the previous owner and an amendment has been made to the purchase agreement that require the current owner to remove all of the items

stored on-site before the property transfer. Overgrown vegetation will also be removed from the site.

- [47] The photographs submitted by the Appellant were taken from second storey windows. At ground level there is a solid fence that screens the view of the subject site from the Appellant's property. The Appellant did not submit any photographs of the property located on the other side of their building where a trucking business is located with many trucks and trailers parked outside in the yard. It was his opinion, the property to the east of the Appellant's will have more of a negative impact than the proposed development as his business will have a more professional appearance and will be more characteristic of the surrounding buildings.
- [48] He spoke with the Treasurer of the Condominium Board in September and discussed his plans for the site.
- [49] No oil or other products that could create an environmental concern are used in business operations. An Environmental Report confirmed that the site is graded from the condominium site to the street.
- [50] Two business owners located west of 99 Street support the proposed development.
- [51] Mr. Chipchura provided the following information in response to questions from the Board:
- a) One indoor service bay will be developed in the main building.
 - b) The yard will be paved and used to provide staff or customer parking.
 - c) The accessory building will be painted and used to provide additional storage.
- iii) Position of the Development Officer, Mr. P. Kowal:*
- [52] Mr. Kowal provided a written submission that was considered by the Board but he did not attend the hearing.
- iv) Rebuttal of the Appellant:*
- [53] The appeal was filed based on concerns regarding the broad nature of the use and not the specific business or business owner.
- [54] None of the information provided on the development permit application has been tied to the development permit. No conditions have been imposed to restrict outdoor business activity or storage.

Decision

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

Reasons for Decision

[56] An Automotive and Equipment Repair Shop is a Discretionary Use in the (IM) Medium Industrial Zone, pursuant to section 420.3(2) of the *Edmonton Zoning Bylaw*.

[57] The proposed development complies with all of the development regulations pursuant to the *Edmonton Zoning Bylaw*. Therefore, the only issue before the Board is to determine if the proposed Discretionary Use is reasonably compatible with surrounding land uses.

[58] The Board reviewed the Zoning of the subject site and the surrounding land uses in order to determine whether or not the proposed development is compatible with existing land uses.

[59] The Appellant's site is located in the (IB) Industrial Business Zone. Condominium Corporation No. 1024965 is comprised of Professional, Financial and Office Support Service Uses.

[60] The Board finds that the proposed development complies with all of the development regulations pursuant to the (IM) Medium Industrial Zone and the *Edmonton Zoning Bylaw* and is reasonably compatible with the surrounding land uses for the following reasons:

a) Section 420.1 of the *Edmonton Zoning Bylaw* states that the General Purpose of the (IM) Medium Industrial Zone is:

to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. This Zone should normally be applied on the interior of industrial areas adjacent to collector and local industrial public roadways such that Uses are separated from any adjacent residential areas by a higher quality Industrial or Commercial Zone.

b) Section 7.4(4) of the *Edmonton Zoning Bylaw*, states that **Automotive and Equipment Repair Shops** means:

development used for the servicing and mechanical repair of automobiles, motorcycles, snowmobiles and similar vehicles or the sale, installation or servicing of related accessories and parts. This Use Class includes transmission

shops, muffler shops, tire shops, automotive glass shops, and upholstery shops.
This Use does not include body repair and paint shops.

- c) The proposed development is in keeping with the General Purpose of the (IM) Medium Industrial Zone which expressly allows outdoor operation and outdoor storage areas.
- d) Based on a review of the development permit application and drawings as well as the evidence provided by the Respondent, there may be some minimal outdoor activity but it is clear that the majority of the business related activities will occur in an interior service bay that will be constructed inside the main building as part of the proposed renovation.
- e) The Appellant's site is surrounded by zones that allow Industrial Uses, specifically (IM) Medium Industrial Zones and (IH) Heavy Industrial Zones which allow medium and heavy industrial uses. There is a site zoned (IH) Heavy Industrial Zone located immediately east of the Appellant's site.
- f) Pursuant to section 430.1 of the *Edmonton Zoning Bylaw*, the General Purpose of the (IH) Heavy Industrial Zone is to:
 - provide for industrial Uses that, due to their appearance, noise, odour, risk of toxic emissions, or fire and explosion hazards are incompatible with residential, commercial, and other land Uses. This Zone should normally be located on the interior of industrial or agricultural areas, such that it does not interfere with the safety, Use, amenity or enjoyment of any surrounding Zones.
- g) The Board finds that the industrial uses allowed in the (IH) Heavy Industrial Zone are much more intense and have a much larger impact on the Appellant's site and other surrounding uses than the proposed development in the (IM) Medium Industrial Zone which is less intense and much more characteristic of the general neighbourhood.

[61] For these reasons, the Board finds that the proposed development is reasonably compatible with the neighbourhood and supports the decision of the Development Authority to exercise discretion to approve the proposed development. Therefore, the appeal is denied.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members In Attendance: Ms. P. Jones; Ms. S. McCartney; Mr. L. Pratt; Ms. K. Thind

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 6, 2018
Project Number: 286793970-001
File Number: SDAB-D-18-193

Notice of Decision

- [1] On November 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 23, 2018**. The appeal concerned the decision of the Development Authority, issued on October 12, 2018, to refuse the following development:

Change the Use from General Retail to a Cannabis Retail Store.

- [2] The subject property is on Plan 4874KS Blk 2 Lot 11, located at 4625 - 118 Avenue NW, within the (CB1) Low Intensity Business 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; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair 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, Mr. F. Kauser, representing 2101242 Alberta Inc. and Ms. K. Becker Brookes, Reynolds Mirth Richards & Farmer LLP:*

- [7] The proposed development is located at 4625 – 118 Avenue, in a dense commercial area that borders on residential development located north of 118 Avenue.
- [8] A review of the submitted photographs illustrated the location of the proposed Cannabis Retail Sales Use, adjacent to a Pharmacy. A lease has been signed with the owner of the Pharmacy who is the landlord.
- [9] The subject site is located in the (CB1) Low Intensity Business Zone and Cannabis Retail Sales is a Permitted Use. The proposed development was refused by the Development Authority because it does not comply with the minimum required 200 metre separation distance from an approved Cannabis Retail Sales location at 4512 – 118 Avenue, which is located 156 metres away.
- [10] In all other respects, the proposed development complies with all of the other regulations contained in the *Edmonton Zoning Bylaw*, including separation distances from sensitive Uses.
- [11] Further, the proposed Cannabis Retail Sales Use complies with all setback requirements from sensitive uses established in the provincial regulations.
- [12] Ms. Becker Brookes submitted that pursuant to section 70(1)(b) of the *Edmonton Zoning Bylaw* the Development Officer cannot grant a variance to reduce the separation distance by more than 20 metres. In this case the requested variance is minor (22 percent). The variance power of the Development Officer is more limited than the broader variance power provided to the Board in section 687 of the *Municipal Government Act*.
- [13] Elements of the variance test are relatively subjective and the Board requires relevant and reliable evidence in order to determine 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.
- [14] The test for the requested variance has been met because no reliable evidence has been provided that would cause the Board to conclude that the variance would have an incremental impact, anticipated or speculated, with respect to allowing a Cannabis Retail Sales Use less than 200 metres away from another Cannabis Retail Sales Use.
- [15] The Court of Appeal has provided some direction in *Thomas v Edmonton (City)*, 2016 ABCA 57 in that development regulations have to be balanced and that it is appropriate to use discretion to grant variances under certain circumstances.

- [16] The separation distances contained in the *Edmonton Zoning Bylaw* were premised on public engagement, stakeholder workshops, online feedback, the public hearing and Council debate. Despite the concerns raised in various settings, it is acknowledged by the City that the land use impacts of the Cannabis Retail Sales Use are not yet known and key differences exist from Minor/Major Alcohol Sales.
- [17] Presumably the separation distance requirement between Cannabis Retail Sales locations are aimed at preventing the clustering in main commercial areas to manage such negative impacts as increased crime and traffic.
- [18] However, no studies or reports establishing a link between Cannabis Retail Stores and these purported negative impacts could be located to support the information that was presented to Council and informed their decision to include separation distances between Cannabis Retail Sales locations.
- [19] Ms. Becker Brookes noted that some municipalities have not imposed any separation distance requirements between Cannabis Retail Sales locations based on the conclusion that there were no planning nuisances to be addressed. The separation distance requirements established by other municipalities vary between 150 and 300 metres. The proposed 156 metre setback is well within the range that is considered acceptable by those municipalities.
- [20] Mr. Kauser provided an overview of the site and the proposed location. He has been in discussions with the AGLC for several months. An inspection of the site has been completed and the only outstanding matter is the construction of a secure storage room for products in the basement. He is currently waiting for a contractor to complete the construction.
- [21] It is his hope that the store will be ready to open within one month.
- [22] He noted that there is a “For Lease” sign in the window of the previously approved Cannabis Retail Sales store and that this location is not included on the list of approved businesses on the AGLC website. This leads him to believe that although that location has received a development permit from the City it has not yet received provincial approval.
- [23] He noted that the site that has received a development permit is located close to a liquor store.
- [24] Ms. Becker Brookes referenced photographs of the subject site to illustrate the nature of the surrounding businesses and street views along 118 Avenue. There is some high density residential housing located across the rear lane and a walk up apartment building located immediately west of the subject site. JL Pharmacy is located in the other half of the existing building.

- [25] A photograph of the approved Cannabis Retail Store located in a two storey building with commercial uses on the ground level and residential housing above was referenced. This is a popular development style in this neighbourhood.
- [26] A Google map was referenced to illustrate that the proposed site and the previously approved site are located almost one block apart, the approved site is located on the north side of 118 Avenue and the proposed site is on the south side of 118 Avenue. There is a diverse mix of businesses located along 118 Avenue with higher density residential housing located north and south of 118 Avenue.
- [27] Ms. Becker Brookes submitted that approving the proposed Cannabis Retail Sales Use within 156 metres of another approved Cannabis Retail Sales Use will not unduly interfere with the amenities of the neighbourhood or affect the use, enjoyment or value of neighbouring parcels of land for the following reasons:
- a) There is more flexibility in Edmonton for public consumption of cannabis than liquor, meaning people are not required to drive home to consume it;
 - b) The area is close to relatively dense residential development, meaning many customers will walk instead of drive;
 - c) The next nearest Cannabis Retail Store locations are a significant drive;
 - d) The stores remain almost a block apart and are on different sides of the avenue;
 - e) The majority of uses along 118 Avenue are not particularly sensitive uses and are either reasonably compatible with a Cannabis Retail Store or would be closed in the evenings when the store would be busiest; and
 - f) One month into legalization, the anticipated negative impacts have not come to fruition.
- [28] Ms. Becker Brookes believed that the requested variance is minor in nature and that this factor must be taken into consideration together with strict provincial licensing requirements for Cannabis Retail Stores.
- [29] Provincial licensing requirements are very stringent and aimed at reducing the potential negative impacts of Cannabis Retail Sales, such as increased crime, loitering and the encouragement of cannabis use. Provincial enforcement will be much more stringent than municipal enforcement.
- [30] Further, it is not yet known if the nearest location has received a provincial licence, while the proposed development is close to completing the provincial approval process. A development permit is still required. There is a real possibility that a Cannabis Retail Store could receive a development permit from the City but not receive a provincial

licence which would create a 200 metre dead zone and cause other applications to be put on hold, which is what is occurring in the present circumstance.

- [31] It is not realistic to conclude that having two Cannabis Retail Stores that are 156 metres apart instead of 200 metres apart will in any way increase or exacerbate the impacts, if those impacts ever come to fruition.
- [32] No relevant or reliable evidence has been provided to the Board that having two Cannabis Retail Store locations within 156 metres of each other will, in any way, interfere with the amenities of the neighbourhood or affect the use, enjoyment or value of neighbouring parcels of land. It is also noted that despite notice being provided to owners who reside within 60 metres of the subject site, no one appeared or provided any evidence in opposition to the proposed development.
- [33] If the Board concludes on the evidence provided 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, the variance should be granted because the proposed development complies with all of the development regulations contained in the *Edmonton Zoning Bylaw*.
- [34] Professor F. Laux addressed this issue in *Planning Law and Practices in Alberta*, and states at p. 10-53:
- That said, it is nonetheless doubtful that a request for a variance relative to a permitted use, which otherwise complies with the land use bylaw and is found by the Board to meet the requirement of the subsection, can be rejected.
- [35] The requested variance is minor and no evidence has been provided that the 22 percent variance will change the anticipated impacts of having two Cannabis Retail Stores located 156 metres apart instead of 200 metres apart.
- [36] Ms. Becker Brookes and Mr. Kauser provided the following information in response to questions from the Board:
- a) The proposed development will be located in the east half of an existing commercial building.
 - b) Although the existing Cannabis Retail Sales Use received a development permit from the Board, it may not have been approved by the AGLC. It is not included on the list of approved permits available on the AGLC website and a “For Lease” sign has been placed in the window of the building. Because the development permit will run with the land another Applicant could take over that development permit.
 - c) It was acknowledged that separation distances between Cannabis Retail Sales Uses vary between 150 and 300 metres in other jurisdictions. However, the advantage of reviewing these distances is that these areas in the United States have had the legalization of cannabis in place for some time and they have determined the

- minimum required separation distance based on experience rather than just simply picking a distance. It was noted that Seattle and Boulder both have a separation distance of 150 metres. There is a range of separation distances but 150 metres is not outside of the acceptable distance for municipalities that have decided to impose a separation distance. Many municipalities have not imposed any separation distance. So why would varying the separation distance result in planning implications in Edmonton that have not occurred in other municipalities.
- d) It was acknowledged that the required 22 percent variance is much greater than the 10 percent that is allowed to be varied by the Development Authority. However, the intention of section 687 of the *Municipal Government Act* is to provide the Board with a much more flexible variance power than is provided to the Development Authority.
 - e) The 200 metre separation distance was established as a result of public consultation but public consultation and feedback from individuals regarding what they think the separation distances should be does not necessarily mean that there is a valid planning reason to require separation distances. Individuals from many municipalities said that they did not want Cannabis Retail Sales in their community. That does not mean that a Cannabis Retail Sales Use from a planning perspective is inappropriate without considering the actual impacts on neighbouring uses of land. Public consultation led to the imposition of separation distances but there is an absence of planning expertise regarding the negative impacts from a planning perspective of allowing Cannabis Retail Sales Uses within a certain distance of each other. The City acknowledged that there is a difference between Minor and Major Alcohol Sales Uses and a Cannabis Retail Sales Use because of the consumption aspect.
 - f) It was her opinion that the proposed development does not create clustering. Much like liquor stores, Cannabis Retail Stores will offer different products, different levels of service, and a variety of services to residents which from a planning perspective should be encouraged. Even though the incremental difference is 22 percent, the sites are approximately one block apart which is what the 200 metre distance was established to accomplish. The sites are located on different sides of the avenue. The Applicant intends to have a higher end store as illustrated in the renderings that have been submitted.
 - g) Traffic and parking will not be impacted. This is an area of the city that is familiar with more challenging uses. Provincial licensing requirements are extensive and address any concerns regarding security and crime prevention. It was noted that the provincial regulations do not include a minimum separation distance between two Cannabis Retail Stores.
 - h) The proposed development is a Permitted Use at this location. Therefore, the incremental impacts of reducing the separation distance have to be considered. The site is located in a commercial area on a pedestrian heavy street surrounded by residential housing. The impacts of having two Cannabis Retail Stores located within

one block of each other in this location, as part of a long corridor of commercial uses, are much less than they would be if they were located in a commercial node in the centre of a neighbourhood. There are a large variety of uses in this area and none of them are particularly sensitive as far as the impacts of Cannabis Retail Sales.

- i) It was her opinion that no evidence has been provided from a planning perspective to support the imposition of this development regulation. Personal opinions have been provided through public consultation. She was unable to find anything more concrete to demonstrate known true planning impacts that would support the imposition of the minimum required separation distance.
- j) The onus is on the Appellant to convince the Board that there will not be any material impact on neighbouring uses of land. In this case evidence has been provided that meets the test of the Board. Therefore, the Board has to weigh that evidence against evidence brought from the Development Authority that the test was not met. It was her opinion that there is a void of evidence from the Development Authority that the test was not met and it would be an error for the Board to find in that favour when there is no evidence to support a decision to deny this appeal.
- k) Mr. Kauser indicated that the traffic flow would be improved because the two stores will be located on different sides of 118 Avenue. Alcohol and cannabis cannot be compared. Cannabis use may reduce opioid use and improve the area. The development of a higher end store could create more employment and improve the neighbourhood.
- l) The proposed parking complies with both provincial and municipal regulations.

ii) *Position of the Development Officer, Mr. I. Welch and Mr. S. Chow:*

- [37] Because Cannabis Retail Sales is such a new Use Class it is difficult to create an evidence base. However, Council was well within its right to establish development regulations including separation distance requirements based on the public perspectives and concerns that were provided through the extensive consultation process.
- [38] They are aware of several instances where approved development permits for Cannabis Retail Sales have changed hands suggesting that this too could happen with the currently permitted Cannabis Sales Use location across the street from the proposed development before the Board.
- [39] Approving the proposed development could result in clustering because there are several store fronts in this area offering the same type of adult services which could result in other businesses not wanting to operate in the area resulting in a decrease in the mix of services provided.

- [40] A required variance that is larger than 10 percent creates concern.
- [41] The subject site is located in the Main Streets Overlay. The General Purpose of the Overlay, section 819.1 of the *Edmonton Zoning Bylaw* states that “the purpose of this 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”. However, the need to fill up store fronts has to be balanced by the need to avoid clustering which is a balancing act.
- [42] This portion of 118 Avenue has a reputation and has experienced problems in the past. Development regulations have been established for surrounding sensitive Uses. It was conceded that a Cannabis Retail Sales Use is a Permitted Use at this location, but it is limited by conditions that the Applicant should meet especially in a neighbourhood where there are a number of sensitive Uses.
- [43] It could not be confirmed whether or not on street parking is allowed along 118 Avenue or if it is a bus route.

vi) Rebuttal of the Appellant

- [44] It was Ms. Becker Brookes’ opinion that, given the nature of this commercial area, allowing the proposed Cannabis Retail Sales Use to be located one block away from another Cannabis Retail Sales Use will not discourage or prohibit other businesses from locating in this area. Diversity in planning is a good planning goal.
- [45] Because Cannabis Retail Sales Uses are coming on-line in a short period of time, the proposed separation distance of 156 metres is not significant. The owner of JL Pharmacy supports the proposed the development because it is complimentary to his business.
- [46] In this case, there is a relatively significant distance between the two locations because they are located on different blocks on opposite sides of 118 Avenue. Clustering occurs when a number of Uses are approved that prevent the development of a vital commercial area. However, granting this variance will not have an impact on the vitality of commercial development in this area.

Decision

- [47] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

[48] A Cannabis Retail Sales Use is a Permitted Use in the (CB1) Low Intensity Business Zone, pursuant to section 330.2(3) of the *Edmonton Zoning Bylaw*.

[49] The proposed development complies with all of the development regulations except section 70(1) which states:

Any Cannabis Retail Sales shall not be located less than 200 metres from any other Cannabis Retail Sales. For the purposes of this subsection only:

- a. The 200 metres separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use.
- b. The Development Officer shall not grant a variance to reduce the separation distance by more than 20 metres in compliance with Section 11.

[50] The Board has not granted the variance for the following reasons:

- a) The minimum separation distance requirements contained in section 70(1) of the *Edmonton Zoning Bylaw*, to regulate the distance between Cannabis Retail Sales has been established for several reasons. Firstly, to foster a diversity of commercial and retail Uses in a given neighbourhood and secondly to prevent the clustering of Uses which have the potential, when located too close together to cause a magnification of potential deleterious effects.
- b) Council established a 200 metre separation distance between Cannabis Retail Sales when section 70(1)(a) of the *Edmonton Zoning Bylaw* was adopted and limited the variance power of the Development Officer, pursuant to section 70(1)(b) so that they were not allowed to grant a variance to reduce the separation distance by more than 20 metres.
- c) However, the Board has the authority to vary or waive this requirement if it finds pursuant to section 687(3)(d) of the *Municipal Government Act* which states:

In determining an appeal, the subdivision and development appeal board 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.

- d) More recently in *Thomas v Edmonton (City)*, 2016 ABCA 57, the Court of Appeal commented more generally upon the power of the Board to vary development regulations. Paragraph [29] states:

What then is the rationale for this exception? Statutory plans and land use bylaws set out general development standards that are common to all lands in a specific area. These standards are typically defined with precision so that everyone understands what a particular site can be used for, and what can be constructed thereon. But as with all line-drawing, it is recognized 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 s 687(3)(d) are met.

- e) In this case, the Board identified the following concerns regarding the requested variance:
 - i.) The two Cannabis Retail Sales Use sites are only 156 metres apart.
 - ii.) Both Sites are located along a pedestrian friendly corridor which makes it easy for an individual to travel from one store to the other.
 - iii.) The Cannabis Retail Sales stores are not separated by any large infrastructure or natural impediments to either pedestrian or vehicular traffic.
 - iv.) The Cannabis Retail Sales stores are linearly connected by 118 Avenue and are visible to each other.
 - v.) The Board is concerned that granting the required variance could lead to a reduction in the diversity of businesses along this portion of 118 Avenue.
 - vi.) Based on information provided in the written submission of the Development Officer, the Board notes that fewer restrictions have been placed on the public consumption of cannabis than on the public consumption of alcohol. Therefore, the Board finds that maintaining the minimum required separation distance of 200 metres between Cannabis Retail Sales locations may reduce the concentration of the public consumption of cannabis along this portion of 118 Avenue.

- vii.) The Board further notes that the subject Site is surrounded by residential housing zones, specifically an (RA7) High Rise Apartment Zone to the west and an (RF3) Small Scale Infill Development Zone to the south. Based on the close proximity of these residential uses to the subject Site, the Board is more resistant to waive the minimum 200 metre separation distance requirements pursuant to section 70(1) of the *Edmonton Zoning Bylaw*.

[51] For all of the above noted reasons, the Board finds that the proposed development with the required variance, will unduly interfere with the amenities of the neighbourhood, and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

[52] Therefore, this appeal is denied and the refusal of the Development Authority is upheld.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance: Ms. P. Jones; Ms. S. McCartney; Mr. L. Pratt; Ms. K. Thind

Important Information for the Applicant/Appellant

1. 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.
2. 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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 6, 2018
Project Number: 287035734-001
File Number: SDAB-D-18-194

Notice of Decision

- [1] On November 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 1, 2018**. The appeal concerned the decision of the Development Authority, issued on October 12, 2018, to refuse the following development:

Change the use from a General Retail Store to a Cannabis Retail Sales.

- [2] The subject property is on Plan 3614NY Blk 63 Lot 24A, located at 11431 - 40 Avenue NW, within the (CSC) Shopping Centre Zone.
- [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 and aerial map;
 - The Appellant’s written submissions; and
 - Three on-line responses in opposition and one letter of opposition to the proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair 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, 2114651 Alberta Ltd.*

- [7] Mr. Huckell of John S. Huckell Professional Corporation appeared on behalf of 2114651 Alberta Ltd. He was accompanied by his clients – Ms. D. Gray, Mr. M. Gray and Mr. T. Nyquvest of 2114651 Alberta Ltd.
- [8] The proposed development meets all of the provincial regulations but is not in compliance with the *Edmonton Zoning Bylaw* (the *Bylaw*).
- [9] The variance required for a setback from a school depends on which site you are measuring from. The definition of “Site” in the *Bylaw* is vague. If you measure from the site that includes the (east) adjacent property owner there is only a 19-metre separation distance between that site and the school site. If you measure from the school to his clients’ site, there is a separation distance of approximately 153 metres “as the crow flies” and the walking distance is approximately 200 metres.
- [10] There are two separate parcels of land. The parcel his client owns contains three separate buildings. The other parcel has a different owner and his clients have no business dealings with the owner of the other parcel.
- [11] Section 687(3)(d) of the *Municipal Government Act* provides the Board the ability to vary *Bylaw* regulations if the proposed development would not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. There is an existing liquor store that is located closer to the school than the proposed development. The federal government has made cannabis a legal product that can be sold in a similar manner as liquor; therefore the proposed development would not affect the neighbouring properties or businesses in any way.
- [12] Alberta Court of Appeal decision *Newcastle Centre GP Ltd v. Edmonton (City)*, 2014 ABCA 295 [*Newcastle*], directs that unless it can be shown that harm is being done to neighbouring properties the Board should be exercising discretion in favour of varying the City requirement. He referred to an SDAB decision (SDAB-D-18-171) released on November 8, 2018, that stated under paragraph [61]

....the Board notes that in *Newcastle*, the Court of Appeal ruled that it is an error for the Board to assume, without any evidence, that the *Bylaw* creates a presumption of harm to the public or that the Board cannot intervene and grant variances unless that presumption is rebutted by an applicant.

He submits that the Board should exercise its discretion knowing the provincial requirements have been met.

[13] Mr. Huckell provided the following responses to questions from the Board:

- a) He confirmed that both separate parcels of land have the same cross-easement agreement registered on their respective titles that allow them to share a parking lot. There is no agreement in place regarding snow clearance and maintenance of the parking lots as each separate parcel owner looks after their own.

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

[14] Mr. Welch agreed that the definition of “Site” is very vague in the *Bylaw*.

[15] The title for the specific sub-parcel that the Appellant owns is technically a portion of the larger lot. Under the land title the Appellant holds the rights to a portion of that lot. He referred to the original plan of survey dated 1965. The measurement between the proposed development and St. Stanislaus Elementary School must be taken from the closest point of the overall site as there does not appear to have been any subdivision.

[16] The following clarifications were provided by the Appellant and by one of the Board members:

- a) Mr. Huckell, Appellant, clarified that the 1965 plan of survey is not current and there has been a subdivision of the site since that time. There are two distinct titles; he referred the Board to the documents in his submission confirming this.
- b) Mr. Pratt, a former surveyor and one of the Board members, confirmed that the Real Property Report shows that the lot has been subdivided into two different titles. It appears to have been subdivided by the “metes and bounds” method of subdivision, not by a plan of survey. The metes and bounds method of subdivision is no longer used.

[17] Mr. Welch submits that this would still be considered as one site as there is no direct road access to the Appellant’s lot by any practical way other than through the remainder of Lot 24A. For that reason the calculation for the required setbacks must be based on both lots rather than one particular lot.

[18] Council has chosen to apply a more stringent regulation when it comes to setback requirements of a Cannabis Retail Sales from schools. He referred to a Google aerial photograph to provide context to the area. St. Stanislaus School is located 19 metres across 114 Street to the east of the subject site. There is a park, community league and another elementary school further south along the east side of 114 Street. Residential properties are located south of the proposed development along the west side of 114 Street. It is a very short walk from the schools to the strip mall.

[19] The definition of “Site” allows more than one lot to be considered as part of the same site. He provided the example of a Semi-detached House being built over two lots.

[20] Mr. Welch provided the following responses to questions from the Board:

- a) The two lots should be considered as one site as parking is being shared and there is one shared vehicular access to this parking.
- b) There is no change in parking requirements when converting from a General Retail Store to Cannabis Retail Sales Use.
- c) Both St. Stanislaus School and Greenfield School further south are K to 6 schools. The proposed development could cause some very serious impact as grade 6 students may be interested in trying cannabis products.
- d) He agrees that the measurement provided by the Appellant showing that the Appellant's parcel is 153 metres from St. Stanislaus School is fairly accurate; however, it still does not meet the 200-metre *Bylaw* requirement. The location of the school buildings are of specific concern in this case as they are not on the far side of the school site.
- e) If the Appellant's parcel was considered as a separate site it would meet the setback requirement from Greenfield School. It would also meet the minimum setback requirement to the park located in between the two schools. The Development Officer could treat the school and park sites as one site or three separate sites; he has considered them separately.
- f) One consideration the Development Authority used to determine what a site is would be road access. If a site containing several lots can be accessed from two separate roadways it may be treated as two sites. If one vehicular access is shared by several lots it would likely be treated as one site.
- g) Both lots in question fall under the same zone which adds to the argument that this is one site.
- h) A fence separates the Appellant's parcel from the lane to the west and there is no vehicular access to this lane although there are some gaps in the fence that allow pedestrian access. There is some parking behind the proposed development adjacent to 39 Avenue but there is no vehicular access to 39 Avenue. This parking can only be accessed by driving around the building on the abutting lot.

iii) Position of Affected Property Owner in Opposition

[21] Mr. M. Sawdon, Trustee, appeared on behalf of Dayspring Presbyterian Church. The church is located across the lane immediately to the west of the proposed development.

[22] The church received notification of the appeal hearing on November 9, 2018 and it was forwarded to him a few days later. He does not feel they have been provided with sufficient notice to retain legal counsel and properly prepare for today's hearing as the church is run by a large committee who typically meet once per month.

- [23] The Chair explained that there are no legislated separation distances between Cannabis Retail Sales and Religious Assemblies. The proposed development is a Permitted Use and the issue is simply that the Cannabis Retail Sales is too close to a school and park.
- [24] Mr. Sawdon stated he would not be able to add new information to the City's submission in regard to this issue.
- [25] The concerns of the church are expressed in the submitted letter and he is not requesting an adjournment of the hearing at this time. He is generally concerned about the impact of cannabis on children.

vii) Rebuttal of the Appellant

- [26] The City's definition of "Site" is arbitrary. There is an existing liquor store in this strip mall which would have required a variance since it would have had to be at least 100 metres away from the school.
- [27] Whether the separation distance is calculated as site-to-site or site-to-building, the provincial regulations have been complied with.
- [28] *Newcastle* should be applied in this case as there has been no evidence provided that suggests any harm. He cannot see how selling a legal product from a retail shopping centre in itself is causing harm to adjacent property owners. The proposed development is not changing the nature of the shopping area given the fact there is an existing liquor store.
- [29] Children are more likely to buy cannabis illegally from someone on the street. The whole idea of legislation is that cannabis sales will be monitored and anyone entering the premises will be required to show identification.
- [30] The Cannabis Retail Sales is not visible from the school as it is blocked by the adjacent No Frills store to the east.

Decision

- [31] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The Cannabis Retail Sales must commence operations within nine (9) months of the date of issuance of this Development Permit.

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).

[32] In granting the development, the following variances to the *Edmonton Zoning Bylaw* (the *Bylaw*) are allowed:

- (a) The minimum required separation distance between the Cannabis Retail Sales Site and any Site being used for public or private education pursuant to section 70(2) is waived.
- (b) The minimum required separation distance between the Cannabis Retail Sales Site and any Site being used for public lands pursuant to section 70(3) is waived.

Reasons for Decision

[33] Cannabis Retail Sales is a Permitted Use in the (CSC) Shopping Centre Zone.

[34] Two development regulations were at issue with respect to this application which necessitated the Board to consider the granting of variances:

- a) Section 70(2) requires any Site containing a Cannabis Retail Sales to be located 200 metres from any Site being used for public or private education. The 200 metre separation distance 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.
- b) Section 70(3) requires Cannabis Retail Sales to be located 100 metres away from public lands. The 100 metre separation distance 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.

[35] The proposed development is located at 11431 – 40 Avenue NW. It is in a building located immediately beside the Petrolia Mall which is on an abutting lot.

[36] During the appeal much discussion was had about whether or not the two lots, the one that contains the Petrolia Mall and the one that contains the subject development, should be treated as one site or two. This became relevant because section 70 of the *Bylaw* calculates the separation distance from both public lands and school sites not from building to building but from site boundary to site boundary.

- [37] The definition of “Site” in section 6.1 of the *Bylaw* is relatively vague: “an area of land consisting of one or more abutting Lots.” This definition is actually not much of a “definition”. It is a definition which makes it clear that two separate lots may be treated as one site. It does not, however, define when separate lots shall be treated as a single site.
- [38] The Development Officer explained that the vagueness allowed the Development Authority to determine what constitutes a site on a case by case basis. It was determined by several factors, one of which was whether or not the sites had a separate or shared access from the adjacent roadway.
- [39] The Appellant, while arguing that the sites should be treated as two separate sites, conceded that whether it was considered as one site or two sites a variance was still needed. If you consider it as one site, the separation distance to the St. Stanislaus Elementary School site would only be 19 metres away. If you consider the site to be two separate sites it would be 153 metres away. As the development regulations require a 200-metre separation distance between the subject site and school site, a variance is still required. Accordingly, the Board moved to consider whether or not a variance would be granted and in so doing applied the test in section 687(3)(d) of the *Municipal Government Act* to determine whether granting the variance to the school and to the public lands would cause material harm to neighbouring properties or undue negative influence on the amenities of the area.
- [40] The variance to the public lands pursuant to section 70(3) of the *Bylaw* will be dealt with first as it is the simpler of the two variance requests.
- a) This particular variance is only needed if the subject site is the entirety of the Petrolia Mall site. If the two lots are considered as separate sites a variance would not be required.
 - b) If it is considered as one site, however, the Board would grant the variance for the practical reasons that the actual location of the Cannabis Retail Sales is significantly in excess of 100 metres from the public lands “as the crow flies” and would be even farther away if one determined the distance by means of pedestrian access, as the entrance to the Cannabis Retail Sales faces 40 Avenue to the north, while the public lands is to the south and east on 114 Street. The Boards finds that the variance test is met with respect to the public lands.
- [41] The variance with respect to the school pursuant to section 70(2) of the *Bylaw* involved other considerations. This is particularly so because St. Stanislaus Elementary School is within 200 metres of the proposed Cannabis Retail Sales no matter how the site is defined.
- a) The City expressed concern about the proximity of St. Stanislaus Elementary School to the proposed Cannabis Retail Sales location. The City expressed concern that the

students of the school would have an enhanced access to cannabis if the proposed development was granted.

- b) The Board, however, notes that the school is in fact an elementary school with its highest grade being Grade 6. Children of that age are not allowed into a Cannabis Retail Sales location by provincial regulations and are of an age that would make it highly unlikely for them to be able to pass for someone who is over the age of 18. The Board finds it highly unlikely that the students from the elementary school would end up obtaining access to cannabis from the proposed site any more than they could or would obtain alcohol from the liquor store which is on the Petrolia Mall location and is in fact significantly closer to the school.
- c) The Development Authority submitted into evidence the results of the public consultation process that led to the City determining to create a 200-metre buffer zone between schools in general and Cannabis Retail Sales. At page 14 of that document it states: “It is more important to be separated from junior and senior high schools as there is more of a draw for teenagers than from elementary schools or daycares where they are not allowed to leave the grounds anyway”.
- d) For these reasons, the Board is satisfied that granting the variance to allow the development to be physically separated from the school by at least 153 metres 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.

[42] For all of the above reasons, the appeal is allowed.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Ms. S. McCartney; Mr. L. Pratt; Ms. K. Thind

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.