

SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA

Tuesday, 9:00 A.M.
November 24, 2020

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

TO BE RAISED

I 9:00 A.M. SDAB-D-20-160

Construct Exterior Alterations to a Gas Bar and
Convenience Retail Stores site (Revision of
Parking and Gas Pump Layout)

8616 - 99 Street NW
Project No.: 347557436-002

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

TO BE RAISED

ITEM I: 9:00 A.M.

FILE: SDAB-D-20-160

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 347557436-002

APPLICATION TO: Construct Exterior Alterations to a Gas Bar and Convenience Retail Stores site (Revision of Parking and Gas Pump Layout)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 9, 2020

DATE OF APPEAL: October 21, 2020

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8616 - 99 Street NW

LEGAL DESCRIPTION: Plan I9 Blk 107 Lot 17, Plan I9 Blk 107 Lot 16

ZONE: (CNC) Neighbourhood Convenience Commercial Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: Strathcona Area Redevelopment Plan

Grounds for Appeal

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

We are solicitors for Centex Go Market and their consultants, Com-Tech Drafting and Design, the project owners and Applicants, respectively, in the above noted matter. Our clients' Development Permit Application has

been refused. On behalf of our clients, we hereby appeal the refusal on the following grounds:

1. The Uses on site have been previously approved and were confirmed as late as May 11, 2018.
2. The Convenience Retail Use is a Permitted Use under the applicable CNC Zoning. The Gas Bar Use is Accessory to the Convenience Retail Use and is, therefore, a Permitted Use, as well.
3. The current Application / Appeal deals only with pump locations and on-site vehicular movement, and revisions to the existing layout are required for circulation and safety purposes, all of which is addressed in an engineered study submitted to the City.
4. To the extent variances regarding the site layout may be required, they do not and cannot have any material or undue impacts on the amenities of the neighbourhood nor on neighbouring properties beyond what is already permitted under the existing approvals. There is no proposal to increase the number of existing gas pumps - it remains at two.
5. Such further and other reasons as may be presented at the hearing of this appeal.

<i>General Matters</i>

Appeal Information:

The Subdivision and Development Appeal Board (the “Board”) at a hearing on November 4, 2020, made and passed the following motion:

“That SDAB-D-20-160 be postponed until November 24, 2020 at the written request of Legal Counsel for an affected property owner and with consent of the Appellant.”

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

Grounds for Appeal

685(1) If a development authority

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

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

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Appeals

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

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or

(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

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

...

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

(a.2) subject to section 638, must comply with any applicable statutory plans;

- (a.3) subject to clause (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- ...
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 310.2(1), a **Convenience Retail Store** is a **Permitted Use** in the **(CNC) Neighbourhood Convenience Commercial Zone**.

Under section 310.3(7), a **Gas Bar** is a **Discretionary Use** in the **(CNC) Neighbourhood Convenience Commercial Zone**

Under section 7.4(13), **Convenience Retail Store** means:

development used for the retail sale of those goods required by area residents or employees on a day to day basis, from business premises which do not exceed 275 m2 in gross Floor Area. Typical Uses include small food stores, drug stores, and variety stores selling confectionery,

tobacco, groceries, beverages, pharmaceutical and personal care items, hardware or printed matter. This Use does not include Cannabis Retail Sales.

Under section 7.4(22), **Gas Bar** means:

development used for the retail sale of gasoline, other petroleum products, and incidental auto accessories. This Use does not include Minor and Major Service Stations.

Section 310.1 states that the **General Purpose** of the **(CNC) Neighbourhood Convenience Commercial Zone** is “to provide for convenience commercial and personal service uses, which are intended to serve the day-to-day needs of residents within residential neighbourhoods.”

Section 819.1 states that the **General Purpose** of the **Main Streets Overlay** is:

to encourage and strengthen the pedestrian-oriented character of Edmonton’s main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

Development Officer’s Note

Development Officers Determination

Note: Proposed development consists of Permitted and Discretionary Uses in the CNC Zone. The Development Officer has therefore reviewed the application against the stricter standard required of Discretionary development.

[unedited]

Strathcona Area Redevelopment Plan

Development Officers Determination

1) The proposed development does not follow Policy 3 of the Walk Up Apartment Area in the Strathcona Area Redevelopment Plan. This Policy notes that “future commercial development on 99 Street...will be geared to neighbourhood convenience use and will be pedestrian oriented” (p. 20).

The Development Officer notes that the proposed development is considered to be a Vehicular-Oriented Development under Section 72 of the Zoning Bylaw. It is the Development Officer’s opinion that although the proposed number of gas pumps will not change, the change of the location of the pumps and their spreading-out within the site would constitute an intensification of such a use. Such an intensification does not appear to be supported by the Policy cited above.

[unedited]

Main Streets Overlay - General Purpose / Parking

Section 819.4(4) states “Parking, loading and passenger drop-off areas shall be designed to minimize pedestrian-vehicle conflicts and prioritize pedestrian movement through the Site.”

Section 819.4(3) states:

No new parking facilities, drive through aisles, and queuing spaces shall be added between an existing building and a public roadway other than a Lane. All existing and proposed surface parking, underground parking access, drive through aisles, and queuing spaces shall be screened from view from a public roadway other than a Lane and adjacent Sites using methods such as Landscaping, fencing or other materials. Crime Prevention Through Environmental Design principles shall be used to enhance the appearance, natural surveillance and safety of the parking area.

Development Officers Determination

2) The proposed development does not meet the General Purpose of the Main Streets Overlay (Section 819), which 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”.

The Development Officer notes that the proposed development is considered to be a Vehicular-Oriented Development under Section 72 of the Zoning Bylaw. By its very nature, such uses are not primarily intended for pedestrians, and therefore does not appear to meet this General Purpose.

It is further noted that the requirement to minimise pedestrian-vehicular conflicts and promote pedestrian circulation (Ref. Section 819.4(4)) does not appear to have been met.

[unedited]

3) No new parking facilities, drive through aisles, and queuing spaces shall be added between an existing building and a public roadway other than a Lane ((Section 819.4(3)).

Proposed: There will be new parking spaces, drive aisles, and queuing spaces between the existing building and the road.

[unedited]

Vehicular - Oriented Uses

Section 72.2(6)(a) states “all pump islands shall be located at least 6.0 m from any boundary of the Site, parking area on the Site, or Lane intended to control traffic circulation on the Site.”

Development Officers Determination

4) Gas pumps shall be located at least 6m from parking spaces (Section 72.2(6)).

Required Setback: 6m

Proposed Setback: 0m

Deficiency: 6m

[unedited]

5) Any gas pump island (including the associated parking space) shall be at least 6m from any property line (Section 72.2(6)).

Required Setback: 6m

**Proposed Setback (flanking side property line [abutting 99 Street]):
2.3m**

**Proposed Setback (side property line [abutting 9909-87 Avenue]):
4.1m**

Deficiency (flanking side property line): 3.7m

Deficiency (side property line): 1.9m

[unedited]

Community Consultation

Section 819.4(15) states:

When the Development Officer determines that a Development Permit application does not comply with the regulations contained in this Overlay:

- a. the Development Officer shall send notice to the municipal address and assessed owners of land wholly or partly located within a distance of 60.0 m of the Site of the proposed development, and the President of each affected Community League and each Business Improvement Area Association operating within the distance described above to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;
- b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been mailed, unless the Development Officer receives feedback from all specified recipients; and
- c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to approve the Development Permit application in accordance with Section 11.3.

Development Officers Determination

6) The Development Authority shall ensure that development does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties. (Section 11.3(1) of Zoning Bylaw 12800; Ref. Section 640(6) of Municipal Government Act):

As a part of the Development Permit application review, the Development Officer completed a public consultation under Section 819.4(15) of the Zoning Bylaw. This is in addition to a supplementary discussion held after the said consultation. Residents from 7 addresses responded, in addition to the Strathcona Community League. 4 of the addresses are on the same block of 87 Avenue as the subject property.

All comments indicated opposition to the proposed development. The majority of concerns included overall safety, noise, and the risks of noxious fumes, impacts to traffic flow, and the appearance of overdevelopment given the relatively small size of the site. There were also concerns raised about overall aesthetics and light pollution.

It is noted that the subject site is extremely small, and in addition to not being able to meet statutory plan policies and the intent of the Main Streets Overlay, the proposed development cannot meet core requirements of the current Zoning Bylaw. These requirements include setback requirements intended to minimise disturbances to adjacent properties, and site design to promote a pedestrian-oriented environment.


The Development Officer notes that the applicant has provided an engineering report in favour of the current proposed site design. However, the Development Officer does not believe that the study can override the intent of the Overlay, or the policies of the ARP.


It is therefore the Development Officer's opinion that, based on the above, the proposed development is likely to unduly and/or materially interfere with, and otherwise negatively impact, adjacent and surrounding properties and development.

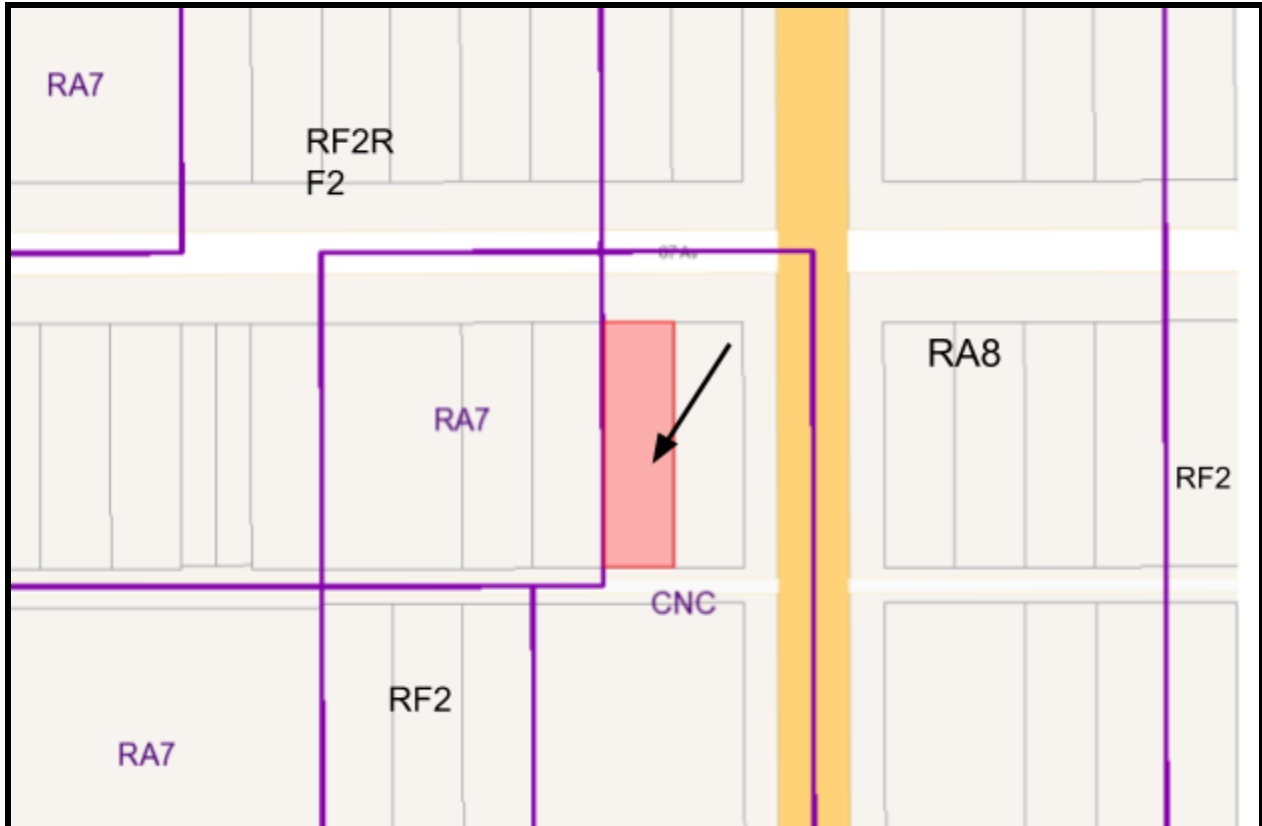
[unedited]

Notice to Applicant/Appellant

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

	<p>Application for Major Development Permit</p>	<p>Project Number: 347557436-002 Application Date: NOV 23, 2019 Printed: October 21, 2020 at 1:51 PM Page: 1 of 2</p>		
<p>This document is a Development Permit Decision for the development application described below.</p>				
<p>Applicant</p>	<p>Property Address(es) and Legal Description(s) 8616 - 99 STREET NW Plan I9 Blk: 107 Lot 17 8616 - 99 STREET NW Plan I9 Blk: 107 Lot 16</p> <p>Specific Address(es) Building: 8616 - 99 STREET NW</p>			
<p>Scope of Application To construct Exterior Alterations to a Gas Bar and Convenience Retail Stores site (Revision of Parking and Gas Pump Layout).</p>				
<p>Permit Details</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.): </td> <td style="width: 50%;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Strat. Plan Overlay/Access Area: Main Street Overlay </td> </tr> </table>			Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Strat. Plan Overlay/Access Area: Main Street Overlay
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<p>Development Application Decision Refused Issue Date: Oct 09, 2020 Development Authority: WELCH, IMAI</p> <p>Reason for Refusal Note: Proposed development consists of Permitted and Discretionary Uses in the CNC Zone. The Development Officer has therefore reviewed the application against the stricter standard required of Discretionary development.</p> <p>1) The proposed development does not follow Policy 3 of the Walk Up Apartment Area in the Strathcona Area Redevelopment Plan. This Policy notes that "future commercial development on 99 Street...will be geared to neighbourhood convenience use and will be pedestrian oriented" (p. 20).</p> <p>The Development Officer notes that the proposed development is considered to be a Vehicular-Oriented Development under Section 72 of the Zoning Bylaw. It is the Development Officer's opinion that although the proposed number of gas pumps will not change, the change of the location of the pumps and their spreading-out within the site would constitute an intensification of such a use. Such an intensification does not appear to be supported by the Policy cited above.</p> <p>2) The proposed development does not meet the General Purpose of the Main Streets Overlay (Section 819), which 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".</p> <p>The Development Officer notes that the proposed development is considered to be a Vehicular-Oriented Development under Section 72 of the Zoning Bylaw. By its very nature, such uses are not primarily intended for pedestrians, and therefore does not appear to meet this General Purpose.</p> <p>It is further noted that the requirement to minimise pedestrian-vehicular conflicts and promote pedestrian circulation (Ref. Section 819.4(4)) does not appear to have been met.</p> <p>3) No new parking facilities, drive through aisles, and queuing spaces shall be added between an existing building and a public roadway other than a Lane ((Section 819.4(3)).</p> <p>Proposed: There will be new parking spaces, drive aisles, and queuing spaces between the existing building and the road.</p>				
<p>THIS IS NOT A PERMIT</p>				

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<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Fees</th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: left;">Receipt #</th> <th style="text-align: left;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: right;">\$368.00</td> <td style="text-align: right;">\$368.00</td> <td>902339413480001</td> <td>Nov 27, 2019</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$368.00</td> <td style="text-align: right; border-top: 1px solid black;">\$368.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fees	Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$368.00	\$368.00	902339413480001	Nov 27, 2019	Total GST Amount:	\$0.00				Totals for Permit:	\$368.00	\$368.00		
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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-20-160

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N