



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: December 14, 2018  
Project Number: 289438583-001  
File Number: SDAB-D-18-198

**Notice of Decision**

- [1] On November 29, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 3, 2018. The appeal concerned the decision of the Development Authority, issued on September 26, 2018 to refuse the following development:

Operate a Major Home Based Business. (Administration office for contracting business and storage of commercial vehicle on driveway - *Finishing The Unfinished*)

- [2] The subject property is on Plan RN39B Blk 57 Lot 1, located at 12310 - 109 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and West Ingle Area Redevelopment Plan apply to the subject property.

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

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

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Document from State Farm Insurance

**Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

### **Summary of Hearing**

#### *i) Position of the Appellant, Mr. E. Turner*

[8] Mr. Turner provided verbal evidence that he has been operating as a Minor Home Based Business for 7 years. The business was recently incorporated and he is the Director. No other employees of the business reside at the property and there are zero business visits per day.

[9] He submitted that his business should be considered as a Minor Home Based Business rather than a Major Home Based Business because the gross vehicle weight of his business vehicle (“Cube Van”) is 4,400 kilograms rather than 5,700 kilograms. He is of the understanding that if his gross vehicle weight was under the limit he is permitted to park it on the street.

[10] He further voiced his confusion over why the Development Authority would designate his business as a Major Home Based Business.

[11] Mr. Turner noted that his van is crucial to the operation of the business and he uses it daily to drive to jobs throughout the City. He verbally confirmed that only tools and smaller items of material such as a piece of drywall, nails, or screws are stored within the vehicle at any given time.

[12] He does not store any materials outdoors and there is no flammable material stored on his property. Large tools are stored within the garage. He believed that other than his cube van there is no evidence that a business is operating from this property.

[13] He parks the van on the street in front of his house because it is too large to fit inside of the garage and because it encroaches into the back alley when parked on the driveway. He referred to the photo of his garage in his submission confirming that the garage is small and would barely accommodate a small car. His personal car is parked on the driveway behind the garage.

[14] He acknowledged that he tries his best to be respectful of his neighbours by leaving for work by 6:30 a.m. and arriving back home at 6:00 p.m. This frees up street parking during the day.

[15] Street parking is taken up by patrons of 124 street during the day and heavily utilized.

[16] Mr. Turner usually works seven days a week but takes the occasional Sunday off.

[17] He provided a document from his insurance company (marked Exhibit A) confirming that the vehicle is used for personal use as well as to carry tools and/or materials to job sites.

[18] Mr. Turner provided the following responses to questions from the Board:

- a) The nature of the business is home renovations.
- b) He went to the Provincial Government to have his van re-classified from 5,700 kilograms to 4,200 kilograms. This allowed him to pay lower rates. He has never hauled more than 4,200 kilograms including vehicle weight.
- c) The roll-up door on the van is secured with a large lock that cannot be broken or cut.
- d) There are no parking restrictions in place in the neighbourhood. Patrons of the medical centre on 124 Street and 109 Avenue use the neighbourhood street parking during the day. While it is busy during the day, there is plenty of street parking available in the evening.
- e) One of the Board members clarified that as soon as a garage is used as storage for a business it becomes a Major Home Based Business as opposed to a Minor Home Based Business. Mr. Turner would be willing to move the storage from the garage into the house if necessary.
- f) It is not feasible to rent off-site parking in a commercial or industrial area as his expenses are already very high and profit margins are small.
- g) He is not opposed to any of the conditions proposed by the Development Officer should the Board grant his appeal. The Chair drew specific attention to number 11 of the Development Authorities recommendations in their written submission, which states: "All commercial, industrial or overweight vehicles shall be parked at an approved storage facility."

*ii) Position of the Development Officer, C. Potter*

[19] The Development Authority did not attend the hearing and the Board relied on Ms. Potter's written submission.

### **Decision**

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

### **Reasons for Decision**

[21] This application is to operate an administration office for a contracting business and for the storage of a commercial vehicle on the driveway. A Major Home Based Business is a Discretionary Use in the (RF3) Small Scale Infill Development Zone.

[22] The following evidence was provided to the Board:

- (a) The Appellant uses a white cube van with a gross vehicle weight (“GVW”) of 4,400 kilograms as part of the daily operation of his business.
- (b) The cube van is used to transport small materials and tools to and from renovation projects.
- (c) The cube van is too large to be stored in the Accessory Building on the subject site. It is parked on the street in front of the Appellant’s residence because it is too large to fit on the driveway.
- (d) The Accessory building is used to store materials necessary to the business.

[23] While the Appellant submits that the business should be classified as a Minor Home Based Business, the Board finds it meets the definition of a Major Home Based Business because the Accessory building is used for business related storage. A Major Home Based Business is defined in Section 7.3(7) of the *Edmonton Zoning Bylaw*:

Major Home Based Business means development consisting of the Use of an approved Dwelling or Accessory Building by a resident of that Dwelling for one or more businesses that may generate more than one business associated visit per day. The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use includes Bed and Breakfast Operations but does not include General Retail Sales, Cannabis Retail Sales or Cannabis Production and Distribution.

[24] The Board is mindful of the Court of Appeal decision, *Edmonton (City) v. Edmonton (Subdivision and Development Appeal Board) and Grewal*, 2017 ABCA 140 (“*Grewal*”), wherein it found that “all elements of a Major Home Based Business definition refer to the use of the dwelling or accessory building, making it clear that it is the *building* which must be used to conduct the business” [Emphasis added]. The Court went on to state “a Major Home Based Business Use class does not capture, nor is it intended to capture, business Uses that occur on the property outside an approved dwelling or accessory building.” Further, the Board notes that the Court acknowledged in paragraph 10 that outdoor business activity or storage is prohibited.

[25] The Board heard evidence that the cube van, while neither the dwelling nor Accessory building, is integral to the Appellant’s business for storage. The *Grewal* case makes it clear that no other portion of the site may be used as part of a Major Home Based Business. The evidence before the Board in this case is that this requirement is not met because the vehicle, which is integral to the business, cannot be housed in the Accessory building and the business cannot afford to store it off-site.

[26] As noted above, the Board also heard evidence of the inability of the present business owner to satisfy the on-site parking requirements. The Appellant gave verbal and

photographic evidence that he has one personal vehicle that he parks on the driveway and that the garage is unavailable for parking as it is full of business related material.

- [27] The Appellant provided verbal indication that he is unable to park the cube van on the garage driveway as it encroaches on the alley if parked there. Based on this, the Appellant requires at least one parking space for the residence and one parking space for the business; therefore, there is a deficiency of one parking spot for the Major Home Based Business.
- [28] While the Appellant indicates that he could park the van on the street in front of his residence overnight, the Board is not satisfied that providing a variance for parking would be compatible with the residential quality of this neighbourhood.
- [29] In light of the *Grewal* decision and the inability to satisfy parking requirements for a Major Home Based Business, the Board dismisses the appeal and confirms the decision of the Development Authority.

Gwen Harris, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance:

Ms. K. Cherniawsky, Mr. R. Hachigian, Mr. R. Hobson, Mr. J. Jones

cc: Development & Zoning Services – C. Potter / A. Wen

**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. 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.
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.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*



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Date: December 14, 2018  
Project Number: 286758265-001  
File Number: SDAB-D-18-199

**Notice of Decision**

- [1] On November 29, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 8, 2018. The appeal concerned the decision of the Development Authority, issued on October 25, 2018, to refuse the following development:

Change the use from a Health Services to a Cannabis Retail Sales and construct Interior Alterations

- [2] The subject property is on Plan I Blk 60 Lot 9, located at 10117 - 82 Avenue NW, within the CB2 General Business Zone. The Main Streets Overlay and Strathcona Area Redevelopment Plan apply to the subject property.

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

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

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Petition of Support from the Appellant
- Exhibit B – Page 24 of the Strathcona Area Redevelopment Plan marked up by Development Officer
- Exhibit C – Cannabis Retail Sales Use Application map marked up by the Development Officer

### **Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

### **Summary of Hearing**

#### *i) Position of the Appellant, Quadz Cannabis*

- [8] Mr. P. Vasanthakumar, Mr. S. Baird and Mr. J. King appeared to represent Quadz Cannabis.

#### Mr. P. Vasanthakumar

- [9] The proposed development was refused as it is only 47 metres from another approved Cannabis Retail Sales location rather than the 200 metres setback required in Section 70.1 of the *Edmonton Zoning Bylaw*.
- [10] The signages for the respective locations are not visible from each other. Their signage will face south and the signage on the approved Cannabis Retail Sales faces west.
- [11] A total of 15 Cannabis Retail Sales applications have been submitted along Whyte Avenue between 109 Street and 96 Street. Of these, 3 have been approved, 2 are under appeal, 2 are on hold and 8 have been either refused or withdrawn. The current walking distance between existing Cannabis Retail Sales on Whyte Avenue is close to 1 kilometre.
- [12] Cannabis Retail Sales are only permitted in the CB2 General Business Zone along Whyte Avenue. The required 200 metre separation distance along with the fact that Cannabis Retail Sales is not permitted in other zones such as DC1 Direct Development Control Provision zones gives approved cannabis retailers a monopoly. This contradicts the General Purpose of the CB2 General Business Zone:

The purpose of this Zone is to provide for businesses that require large Sites and a location with good visibility and accessibility along, or adjacent to, major public roadways.

The separation distance between Cannabis Retail Sales in business districts should be relaxed to 0 metres. In this case, the required 200 metre setback results in the community on the south side of 82 Avenue being underserved.



- [13] Mr. Vasanthakumar provided examples from Calgary and High River where setback requirements have been relaxed in general business zones in the downtown areas. While Whyte Avenue is not downtown, it has the same intent of use.
- [14] Approving their proposed development across Whyte Avenue from an already approved Cannabis Retail Sales will help achieve Edmonton's mandate of "Vision Zero" by preventing ongoing infractions from jaywalking. Signs posted along Whyte Avenue confirm that jaywalking is a problem in this area.
- [15] Approving their development will contribute to the revitalization of the CB2 General Business Zone along Whyte Avenue. The extra foot traffic generated by their business will also benefit neighbouring businesses.
- [16] A recent decision of the Red Deer Subdivision and Development Appeal Board (0262 009 2018) granted a similar relaxation to setback as they are seeking today.

Mr. J. King

- [17] Mr. King provided an overview of how the business will be run and staffed. All staff will be well trained and familiar with the relevant AGLC rules and regulations. Safety of both staff and the public is a priority. Operational hours will be from 10:00 a.m. to 11:00 p.m. daily.
- [18] Strict security protocols are followed at all of their locations which include 24/7 video surveillance, panic buttons at each cash till, 24 hour live monitoring as well as a quick response system in the event of an emergency. All inventory that is not on the active retail sales floor will be kept in a cannabis secure safe room in accordance with AGLC guidelines. The submitted floor plan shows that 60 percent of the floor space will be used for retail sales with the remaining 40 percent being restricted to staff use including the security office and cannabis safe room.
- [19] Stores are designed to have a modern contemporary boutique feel to provide customers with a 5-star experience. Their stores are designed to provide curb appeal as evidenced by the exterior rendering of their High River location.
- [20] Mr. King walked the neighbourhood yesterday seeking support for the proposed development. The letter and map provided to the neighbouring businesses and 55 signatures of support from neighbouring businesses were submitted as Appendix A. Many of the surrounding businesses were excited about more foot traffic being attracted to Whyte Avenue.

Mr. S. Baird

- [21] Relaxing the required separation distance would meet the public policy objective of all three levels of Government:

- a) The Federal Government's three main policy objectives are to keep cannabis out of the hands of youth, profits out of the hands of organized crime, and to protect public health and safety.
- b) The Provincial Government's four main objectives are: to keep cannabis out of the hands of children and youth; to protect public health; to promote safety on roads, and in workplaces and public spaces; and to limit the illegal market for cannabis.
- c) There does not seem to be a direct policy on cannabis at the Municipal Government level and the objectives seem to center more around the Plan Whyte, the Strathcona Area Redevelopment Plan and the Main Streets Guidelines. Pedestrians are given priority in all of these public policy objective documents and there is an acknowledgement that the Whyte Avenue corridor will continue to evolve to enhance the pedestrian public realm.

The main threads between the three public policies surrounding cannabis are pedestrian safety and safe neighbourhoods.

[22] The approved location is on the north side of Whyte Avenue. This location does not service the full Strathcona community, especially with the DC zone to the west. It results in the community on the south of Whyte Avenue being underserved. It would be good public policy for the Board to grant the required variance in this specific neighbourhood given that Whyte Avenue, with a median in the middle, creates a significant separation between the two Cannabis Retail Sales locations.

[23] The Appellants provided the following responses to questions from the Board:

- a) Within the next year or two, product choice will vary from store to store and competing Cannabis Retail Sales locations will cater to different customers.
- b) Allowing the proposed development on the south side of Whyte Avenue will enhance the safety of pedestrians by preventing potential jaywalking and other traffic issues. While the distance between the two Cannabis Retail Sales locations is 47 metres as the crow flies, in reality it is much greater. Pedestrians would have to walk to and from a crosswalk to safely cross Whyte Avenue. It is also quite a car trip to go from one side of the street to the other.
- c) The Appellants have no objections to any of the conditions proposed by the Development Officer should this appeal be granted including the 9 month limitation.
- d) They are in compliance with all AGLC locational requirements.
- e) As a business owner, they would never consider one additional store in an area a threat; their proposed development will not create clustering. The Board will be able to prevent future clustering as any future proposed developments within 200 metres

of either location will be denied and would subsequently have to be appealed to this Board in order to obtain approval.

- f) Most of the signatures obtained in the petition (Exhibit A) were from business owners. The property owners of the residential area to the south were not canvassed.

ii) *Position of the Development Officers, S. Chow and I. Welch*

- [24] Mr. Imai commented that the requested variance is quite large and the proposed development could result in a potential clustering effect.
- [25] A large number of the cannabis applications that were refused in the core area of Whyte Avenue were in Direct Control 1 Zones. These Direct Control 1 zones did not include variance powers; therefore, the majority of those applications had to be refused. There is one application still pending which will likely be approved.
- [26] Page 24 of the Strathcona Area Redevelopment Plan containing a map of the Whyte Avenue Commercial Area was submitted as Exhibit B. The five approved cannabis locations are marked in blue and the pending application within the core area is marked in black on this exhibit.
- [27] A copy of an updated “Cannabis Retail Sales Use Application” map was submitted as Exhibit C to provide context as to the location of the proposed development in relation to other nearby Cannabis Retail Sales applications (refused and approved) as well as public lands and education facilities.
- [28] An application has been made for a free standing On-premises Sign by the approved Cannabis Retail Sales location across Whyte Avenue to the north. This proposed sign has not yet been approved but would be oriented east / west. The Appellants’ submissions about signage are speculative at this point.
- [29] The Development Authority has been placing a condition on approved permits stating “The Cannabis Retail Sales must commence operation within nine (9) months of the date of issuance of this Development Permit”. They will consider this condition as having been met if everything is ready to go. Having to wait for product or AGLC licence approval will not be considered a violation of this condition.
- [30] The Development Officers have concerns regarding the petition of support submitted by the Appellants as the people who signed did not provide their addresses. Also, the map shown on the information page at the front of the petition shows the proposed location, but not the currently approved Cannabis Retail Sales on the north side of Whyte Avenue.
- [31] City Council has enacted the 200 metre separation distance between Cannabis Retail Sales locations to avoid clustering and to limit these types of developments to roughly no more than one per block. Approving the proposed development would result in clustering

and would be in contravention of No 1 of the Whyte Avenue Commercial Objectives found on page 7 of the Strathcona Area Redevelopment Plan:

“Promote diversity, uniqueness and a full range of businesses and services for all residents and visitors to the area, while maintaining the compatible and balanced mix of businesses currently existing in the Whyte Avenue Commercial Area.”

- [32] The Development Authority provided the following responses to questions from the Board:
- a) They consider both sides of Whyte Avenue as being part of the same block.
  - b) The Development Officers interpreted the Public Engagement feedback as showing that 67% of people wanted a block or more of separation distance between Cannabis Retail Sales locations. Their goal is to have a reasonable number of locations available but some basic restrictions as to where they are located. The proposed 47 metre separation is quite small and is literally just across the street. They acknowledge the feedback is mixed and various portions can be interpreted in a variety of ways.
  - c) The fundamental issue is at this point with Retail Cannabis Sales they have to go on a non-evidentiary basis; however, planning policy must be taken into consideration. Municipal councils still have a fundamental duty to regulate land uses.

*iii) Rebuttal of the Appellant, S. Baird*

- [33] There was no misrepresentation with regards to the petition. All of the signatures are from supporting businesses.
- [34] The definition of a block deals with a qualitative vs. a quantitative issue. In this case, the approved Cannabis Retail Sales is on the other side of the street that has a median in the middle and it is a high pedestrian area; therefore each side of the street should be considered a separate block.
- [35] They plan to meet the condition of commencing operations within nine (9) months of approval. They may open this location for information purposes if they are unable to operate due to supply issues.
- [36] Regarding the sign currently under review, he urges the Board to base its decision on what exists now, not what MAY be approved.
- [37] The southeast side of this neighbourhood is still underserved and the approved of the proposed development would not result in any clustering issue and would have a non-material impact on the neighbourhood. The distance from the existing store on the north

side is not relevant as their proposed development would serve the residential neighbourhood to the south.

### **Decision**

[38] 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. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5 metres setback. (Reference Section 340.4(3) & (5).)
3. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c)

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

1. The minimum required 200 metres separation distance between the Cannabis Retail Sales from any other Cannabis Retail Sales pursuant to Section 70(1) is reduced by 153.0 metres to permit a minimum allowed separation distance of 47.0 metres.

### **Reasons for Decision**

[40] The proposed development is to change the Use from Health Services to Cannabis Retail Sales. The Subject Site is located in the CB2 General Business Zone. Pursuant to section 340.2(6) of the *Edmonton Zoning Bylaw*, Cannabis Retail Sales is a Permitted Use in this zone.

[41] The Special Land Use Provisions in section 70 regulate this Permitted Use Class and provide in part:

#### 70. Cannabis Retail Sales

1. 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. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 metres in compliance with Section 11; and
- c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)b shall be issued as a Class B Discretionary Development.

[42] The proposed development is to be located on the south side of Whyte Avenue 47 metres from an approved Cannabis Retail Sales located on the north side of Whyte Avenue. Therefore, the proposed development requires a variance of 153 metres to Section 70(1) of the *Bylaw*. The Development Officer is limited to granting a variance of 20 metres.

[43] The Appellants argued that the appeal should be allowed because other municipalities allow a zero separation between Cannabis Retail Sales Uses in commercial areas and because they have had other locations approved in High River and Red Deer. The Board was not persuaded by these two arguments.

[44] The Board notes it is not strictly bound by precedent (even in cases from its own municipality). It considers the merits of each case individually in context on the basis of the presented evidence. In this case, the Board considered the currently applicable provisions of the *Bylaw* and statutory plans as well as the submissions related to subject site, the surrounding area and the number and the locations of currently approved Cannabis Retail Sales and the planning principles concerning clustering.

[45] The Development Officer argued that the variance should be declined because, at 153 metres, it significantly exceeds the 20 metres allowed relaxation to the generally applicable 200 metres separation distance between Cannabis Retail Sales. The Board notes that the magnitude of a variance is often an indication of impact, however this is not always the case. In accordance with section 687(3)(d) of the *Act*, when considering whether to exercise its discretion the key consideration for the Board is impact.

[46] The Board allows the variance of 153 metres after consideration of the following factors.

[47] The Board received no letters of objection and no one appeared in opposition to the proposed development.

[48] The Board considered the petition provided by the Appellants and accepts that they did canvass some of the surrounding businesses and obtained signatures of support from 55 individuals, including business owners, in those premises. However, the Board gave very little weight to this evidence for two reasons.

1. First, the petition itself does not clearly indicate the two locations which give rise to the need for a variance and the petition deals with separation distances in general. It states:

“By signing below, I am in support of Quadz Cannabis location and other cannabis stores not having a 200M separation distance in Central Business districts like CB2 along Whyte Ave. The 200 M distance takes away from the general purpose of Central business district use and should be reduced to “0” to create a customer based retail experience”.

The Board’s task in this appeal is to consider the advisability of a 153 metres variance to the requested Permitted Use and its likely impact given the existing mix of businesses and other Uses in this area including other Cannabis Retail Sales.

2. Second, there are 55 signatories to the petition, but only one address is specified and that address is more than ten blocks from the proposed development. Without addresses or further information, the Board is not able to evaluate how, and to what extent, the remaining 54 signatories are likely to be directly affected by the variance.
- [49] The immediate area is predominately commercial. It falls within the Whyte Avenue Commercial Area identified in the Strathcona Area Redevelopment Plan. The first objective of the commercial area along Whyte Avenue is to:
- Promote diversity, uniqueness and a full range of businesses and services for all residents and visitors to the area, while maintaining the compatible and balanced mix of businesses currently existing in the Whyte Avenue Commercial Area. (Plan, page 7)
- [50] The Board considered the submissions of the Development Authority which note that this commercially oriented portion of Whyte Avenue was identified as particularly suitable for this Permitted Use, and also that a cautious approach should be taken to all variances as the impacts of Cannabis Retail Sales and the necessity for separation distances between these Uses at this point are unknown. The Board therefore also considered the location of other nearby approved Cannabis Retail Sales.
- [51] According to the parties, as a result of the recent change in federal laws legalizing the recreational use of cannabis, nine other applications for Cannabis Retail Sales were received as of August 22, 2018 involving locations within approximately 500 metres of the proposed development (Exhibit C). Several of the applications have been refused or withdrawn. One was refused, but remains pending before the Court of Appeal. One remains pending at a distance of 432 metres to the west. Two were approved: one creating the need for the 153 metres variance and one at 294 metres south west of the proposed development on 80 Avenue.
- [52] At the hearing, the Development Officer also provided rough locations for the six currently approved Cannabis Retail Sales within the entire Whyte Avenue Commercial Area identified in Figure 5 of the Plan (Exhibit B). The two nearest of the six locations identified by the Development Officer as falling within the Whyte Avenue Commercial Area are the approved locations described in the paragraph above.

- [53] Based on the presented evidence, the nearest approved Cannabis Retail Sales Use is located 47 metres away on the north side of 82 Avenue. The Board finds that it is the only location which requires a variance. The Board notes that Whyte Avenue separates the two Uses. It is a major roadway with a centre median, controlled pedestrian crosswalks and signage to discourage “j-walking”. There is no direct access mid-block from one side to the other. Pedestrians must proceed to either the west or east intersection to cross and go back to mid-block to arrive at the other businesses. Currently, there are no other approved Cannabis Retail Sales on either side of Whyte Avenue on this block face nor on any of the block faces along Whyte Avenue between 98 Street to the east and 108 Street to the west.
- [54] Based on the evidence before it, the Board finds that the next nearest approved location as of the date of this hearing was 294 metres as the crow flies to the southwest. This distance exceeds the required minimum by 94 metres. Practically, it is a significantly larger distance for a pedestrian as that Cannabis Retail Sales is located two blocks to the east across a major arterial roadway, Gateway Boulevard, and an additional two blocks to the South on 80 Avenue.
- [55] The Board is mindful that clustering may have material adverse impacts and that those impacts can be avoided by separation distances such as section 70(1) of the *Bylaw*. However, given the current situation and distribution of approved Cannabis Retail Sales amongst the range of other commercial Uses within the Whyte Avenue Commercial area, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Based on the presented evidence, the Board concludes that allowing the proposed Cannabis Retail Sales Use would not result in a clustering of Uses so as to create a material adverse impact, nor would it materially reduce the diversity of Uses in this dense and diverse commercial area contrary to the intent of the Plan.

Kathy Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance:

Ms. G. Harris, Mr. R. Hachigian, Mr. R. Hobson, Mr. J. Jones

CC: Development & Zoning Services – S. Chow / I. Welch / H. Luke  
City of Edmonton Law Branch – M. Gunther



**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.*



**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](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)*

Date: December 14, 2018  
Project Number: 287278928-001  
File Number: SDAB-D-18-188

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on November 7, 2018, made and passed the following motion:

“That SDAB-D-18-188 be TABLED to November 29, 2018 at the written request of legal counsel for the Appellant and with the consent of the Development Officer.”

- [2] On November 29, 2018, the Board made and passed the following motion:

“That SDAB-D-18-188 be raised from the table.”

- [3] The Board heard an appeal that was filed on October 15, 2018. The appeal concerned the decision of the Development Authority, issued on October 1, 2018 to refuse the following development:

To develop a Cannabis Retail Sales.

- [4] The subject property is on Plan NB1 Blk 3 Lot 159, located at 10125 - 104 Street NW, within the HA Heritage Area Zone. The Special Area Downtown Overlay and Capital City Downtown Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s submission; and
- Four letters of support and two online responses in opposition.

**Preliminary Matters**

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

- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).
- [8] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel. The Chair disclosed that an individual in the notification area who wrote a letter of support for the proposed development is employed by her husband’s firm. Again, no objections were received from the parties.

### Summary of Hearing

*i) Position of the Appellant, K. Haldane of Ogilvie LLP*

- [9] Mr. Haldane was accompanied by H. McColl and A. McColl of Armstrong Block Cannabis and D. Lalonde, their landlord.
- [10] The proposed development does not meet Section 70(2) and 70(3) of the *Edmonton Zoning Bylaw* because it is within the minimum separation distance requirements from:
- a) two public parks (Michael Phair and Beaver Hills House Parks),
  - b) a school (Centre High), and
  - c) a public library (Enterprise Square EPL).

The Development Officer has no power to vary these separation requirements as per Section 70(4) of the *Edmonton Zoning Bylaw*.

- [11] The proposed development falls within the Heritage Area Zone and Cannabis Retail Sales is a Permitted Use in this Zone. The General Purpose of this zone is:
- . . . to establish a special heritage character Zone, in which the existing concentration of historical resources shall be preserved, rehabilitated and reused, and to ensure new developments are pedestrian friendly and compatible in scale, function, built form and design continuity with the historical, architectural and urban village character of the area.

Pages 13 through 15 of the Appellant’s submissions outlines the architectural treatments that should be followed in this Zone. The Armstrong Block is an example of the architectural design this plan is trying to preserve.

- [12] Tab 4 of the Appellant’s submission contains a zoning map with the location of the Armstrong Block shaded with a red rectangle. The Heritage Area Zone is very small and goes from Jasper Avenue to 104 Avenue and from the east side of 103 Street to the west side of 104 Street.

[13] Bylaw 18387 introduced cannabis regulations to the *Edmonton Zoning Bylaw* and enacted Section 70 which imposed the minimum required separation distances which are at issue today. As part of Bylaw 18387, City Council added Cannabis Retail Sales as a Permitted Use to the majority of the downtown commercial zones as well as to 910.7 which is the downtown Heritage Area. It was the intention of council that this Use be available in the Heritage Area Zone and they did not intend for the regulations to nullify anyone's ability to develop that Use.

[14] Tab 6 contains two maps:

- a) Map 1 has a 200 metre radius circle centred on the southwest site boundary of Centre High, and
- b) Map 2 has a 200 metre radius circle centred on the southeast site boundary of the Boyle Education Centre.

These two maps illustrate that there is not a single site within the Heritage Area Zone that would not require a variance of the required 200 metre separation distance from a school. Since council approved Cannabis Retail Sales as a Permitted Use within the Heritage Area Zone it does not make sense that this Use cannot fit anywhere.

[15] The most sensible place to put a Cannabis Retail Sales is in the proposed site. That is as far away as you can get from Centre High. Any other site within this zone would be closer to Centre High as well as to the Boyle Street Education Centre. Students at Centre High are primarily 18 to 19 years of age and in their 4<sup>th</sup> or 5<sup>th</sup> year of High School. Students of the Boyle Street Education Centre are younger.

[16] A series of photos was shown to provide context to the area by showing the location of the two parks in question and the numerous surrounding residential towers in relation to the proposed development.

[17] Michael Phair Park is used by nearby residents wanting to have a smoke or take their dog out. There is no children's equipment located in this park and the same is true of Beaver Hills House Park. The two parks are functionally used as one park by residents and downtown employees. Neither park is an attraction for children.

[18] Mr. Haldane referred to excerpts of the *Public Places Bylaw* (Bylaw 14614) to illustrate that both parks qualify as a "Public Place" but neither park fits the definition of "Parkland" as neither of these parks contains: a playground; a sports field; a skate park or bicycle park; an outdoor theatre; an outdoor pool or water spray park; a seasonal skating rink; or an off leash area as per Section II(g) of the *Public Places Bylaw*. Smoking cannabis is permitted in "Public Places" but not in "Parkland".

[19] It is counterintuitive to restrict purchasing of cannabis near these parks if smoking cannabis within these parks is allowed.

- [20] Mr. Haldane referred to the *Newcastle* decision which says you cannot assume that the relaxation of a regulation will cause a negative effect. In this case, relaxing the required separation distance from the parks would create no negative impact and would add an amenity that would otherwise not be available.
- [21] There needs to be some flexibility in planning law to deal with special cases. 104 Street is one such special case. As illustrated on the submitted overhead photo, 104 Street is one of the densest streets in Edmonton. The Appellant pointed out where the Armstrong Block is located relative to the numerous residential towers in this area. There are over 1,100 residential units either built or under construction within a very short distance of the proposed development. Falcon Towers was recently approved for over 700 additional dwellings within ½ a block of the subject site. This photo is from May of this year and was taken while the 104 Street market was underway.
- [22] Many amenities including parks, public education facilities, libraries and Cannabis Retail Sales need to be provided for the many residents of this dense area. It is not easy to maintain the required separation distances and provide all of the required amenities when dealing with this many people. Approving the proposed development will do nothing to harm neighbouring properties or the amenities of the neighbourhood.
- [23] Mr. Haldane referred to two of the four letters of support received:
- a) One letter was from D. Lalonde, the Landlord of the proposed development. One goal of the Heritage Area Zone is to maintain the heritage buildings in this area. This is not possible if landlords do not have tenants. Mr. Lalonde supports the proposed development; having a reliable tenant will allow him to continue to maintain the Armstrong Block.
  - b) M. Kirwin of Access Partners Inc. supports the proposed development and sees no potential harm. This is the building owner immediately to the north of the proposed development.
- [24] In summary, the proposed development supports the general purpose of the Heritage Area Zone. If the goal of separation distance is to keep cannabis away from vulnerable minors, there is no better location within this zone. The library at Enterprise Square is a temporary location and will be moving back to the existing Stanley Milner location just south of Churchill Square in 2020. The required separation distance from a library is temporary. The actual door to door walking distance between the door of a Cannabis Retail Sales and the door of the public library in Enterprise Square is well over 200 metres. There is no harm in relaxing this setback requirement.
- [25] The proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [26] Mr. Haldane provided the following responses to questions from the Board:

- a) He has walked through Beaver Hills Park many times and would call the structure within that park public art. No part of it is meant to engage children and in his view it is not a play structure. If it is a play structure, the variance remains appropriate as the structure is more than 100 metres away from the door of the proposed development.
- b) He has no problem with any of the measurements calculated by the Development Authority, but reiterated that the entire Heritage Area Zone is sterilized by the two schools.
- c) Administration advised that 344 owners were notified of the proposed development.
- d) The Appellants have no concerns with any of the proposed conditions of the Development Authority.
- e) The proposed development is compliant with Section 105 of the AGLC regulations.

*ii) Position of the Development Officers, I. Welch and S. Chow*

- [27] There are more children present during the warm months when the downtown farmers' market is on and it is possible that they would also visit the two parks. One of the public policy aims of the cannabis regulations is to try to minimize the exposure of minors to cannabis.
- [28] Public response to the proposed development was mixed with some in favour and some against.
- [29] They were not able to comment as to whether there is another location within the Heritage Area Zone that would be better suited for the proposed development.
- [30] They confirmed that smoking cannabis is permitted in Michael Phair Park, but were not certain about Beaver Hills Park. They also stated that the structure within Beaver Hills Park appears to be public art as opposed to a playground structure but were not certain.
- [31] They agree that the principles from the *Thomas* case outlined by Council for the City in its legal brief could apply to this situation given the location of the two schools; however, there are other sites nearby in a different zone which would be more suitable.

*iii) Position of Affected Property Owners Opposed to the Development*

- [32] M. Zuo and N. Hu own a condo in the Ikon II Tower and received a notice to Property Owner. They purchased the unit because it was in a friendly neighbourhood, close to schools, a library and parks. They support the City's refusal to set up a cannabis store.
- [33] They feel the proposed development would destroy the current nice environment and will cause some harm to minors. Children and families are in the area on Saturdays when the market is on.

- [34] A Cannabis Retail Sales should be accessed by adults by driving to the development or using public transportation to get to it; it should not be within walking distance.
- [35] Cannabis is worse than alcohol due to the associated smell.
- [36] Mr. Zuo has not been to Beaver Hills Park recently and does not know what the previously mentioned structure is.

*iv) Rebuttal of the Appellant*

- [37] Mr. Haldane declined the opportunity for rebuttal.

**Decision**

- [38] 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*).
- [39] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
- a) The minimum required 100 metres separation distance from public lands (Michael Phair and Beaver Hill House Parks) as per section 70(3) is varied to allow a deficiency of 76 metres, thereby decreasing the minimum required separation distance to 24 metres.
  - b) The minimum required 200 metres separation distance between the Cannabis Retail Site and any Site being used for public or private education (Centre High) as per Section 70(2) is varied to allow a deficiency of 38 metres, thereby decreasing the minimum required separation distance to 162 metres.
  - c) The minimum required 200 metres separation distance between the Cannabis Retail Sales Site and a Public Library (Enterprise Square EPL) pursuant to

Section 70(2) is reduced by 124 metres to permit a minimum allowed separation distance of 76 metres.

### **Reasons for Decision**

[40] This is an appeal of an application for a Cannabis Retail Sales. The proposed site is located in the HA Heritage Area Zone and subject to the Special Area Downtown Overlay and the Capital City Downtown Plan. Pursuant to Section 910.7(2)(e) of the *Edmonton Zoning Bylaw*, Cannabis Retail Sales is a Permitted Use in this zone.

[41] Cannabis Retail Sales is subject to the Special Land Use Provisions in section 70 of the *Edmonton Zoning Bylaw*, including the minimum separation distances from other specified Uses. The development regulations relevant to this appeal are found in sections 70(2) and 70(3):

2. Any Site containing a Cannabis Retail Sales shall not be located less than 200 metres from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the 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 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. the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries; and
  - c. the term "public or private education" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools.
3. Any Site containing a Cannabis Retail Sales shall not be located less than 100 metres from any Site being used for Community Recreation Services Use, a community recreation facility, a provincial health care facility, as public lands, or any Site that is designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:
  - a. the 100 metres 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. the term “community recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in



recreational activities conducted at the facilities, as per the Municipal Government Act; and

- c. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.

[42] The proposed Cannabis Retail Sales requires three variances to these minimum separation distances for the following reasons:

- a) The proposed Cannabis Retail Sales is 76 metres (rather than the 200 metres required per section 70(2)) from a library, the Enterprise Square EPL.
- b) The proposed Cannabis Retail Sales is 162 metres (rather than the 200 metres required per section 70(2)) from a school, Centre High.
- c) The proposed Cannabis Retail Sales is 24 metres (rather than the 100 metres required per section 70(3)) from Michael Phair Park. It is also 73 metres from Beaver Hills House Park which abuts Michael Phair Park.

[43] The application was refused by the Development Officer who is prohibited by section 70(4) of the *Bylaw* from granting variances to either section 70(2) or (3).

[44] The Board has the discretion to grant the three variances in accordance with section 687(3)(d) of the *Municipal Government Act*. In making its decisions about the variances, the Board is subject to two decisions of the Court of Appeal cited by the parties: *Newcastle Centre GP Ltd v. Edmonton (City)*, 2014 ABCA 295 and *Thomas v Edmonton*, 2016 ABCA 57.

[45] The Appellant argued *Newcastle* was most applicable stressing that the Court of Appeal held that the Board cannot simply assume that the relaxation of a development regulation will cause a negative effect without any evidence. In the Appellant's view, the Board should allow the variances as doing so would add an amenity otherwise unavailable in the high density HA Zone and would not create negative impacts.

[46] The Development Officer acknowledged the evidence-based approach mandated in *Newcastle*, but argued that there may be planning reasons here so the Board should adopt a cautious "go slow" position. The Board should deny the variances given the current lack of evidence about the impact of Cannabis Retail Sales and the public feedback which emphasized an interest in separating cannabis from children and youths. Counsel for the City in its written legal submission cited the direction of the Court of Appeal in *Thomas* that the Board should exercise its discretion section 687(3)(d) in cases where the general rule would lead to an unreasonable result and that the Board should not allow variances which defeat its general obligation under section 687(3)(a.1) of the *Act* to comply with the *Bylaw*.

- [47] Bearing the cases in mind, the Board considered the following factors to determine whether or not the requested variances should be granted.
- [48] The proposed development is located within a very dense area as demonstrated by the fact that 344 notices of this appeal were sent out to owners of residential and commercial properties located within 60 metres of the subject Site.
- [49] The Board received six written responses and one in person response from the notified affected parties - four in support and three in opposition to the development.
- [50] The Board considered the content of this mixed feedback:
- a) Two on-line responses in opposition expressed concern over past experiences with people who hung around marijuana dispensaries in Vancouver and general concern that allowing three variances was offensive, ill-advised and precedent setting.
  - b) A couple who own a condo in Icon Tower II attended the hearing to oppose the development. They argued that the development will destroy the current family environment especially when the summer market is operating on weekends and will create negative impacts due to the smell. They had not recently been in the two nearby parks, but believe that a Cannabis Retail Sales would be better in other parts of the City so residents of this area could take a car or bus to purchase cannabis.
  - c) In contrast, a 9-year resident of Icon Tower 1 (directly across from the subject Site) supported the development citing three “unique factors”: the library is temporary; Michael Phair Park is a small green space used primarily by adults to walk their dogs and smoke; and, Centre High serves 19 and 20 year olds looking to upgrade their fourth and fifth year of high school.
  - d) A resident of Fox Towers wrote in support the development simply stating that he did not anticipate any adverse impacts for either the neighbourhood or its amenities.
  - e) The landlord of the proposed development provided a letter of support and his views were relayed by the Appellant at the hearing. As a long time commercial property owner, he believes that the proposed development would provide some stability and enhance his ability to maintain the heritage building while also adding to the available amenities in the area. He explained there are very few children or adolescents in the area including at the parks, Centre High or the temporary library. He believes that adding more people to the park, whether or not they smoke, will make the area safer and reduce current negative activities.
  - f) The owner of the commercial property adjacent to the north which has windows facing the two AP park areas supports the proposed Cannabis Retail Sales for similar reasons. In his view: the Michael Phair Park is used by locals for smoking and dog walking and increased use will add to safety and discourage negative elements

currently in the park; Centre High is for adult education; and, the library is a temporary location.

[51] After reviewing these mixed responses, the Board finds that that on balance the responses tended to show there was relatively little concern about specific material adverse impacts due to the three required variances from the most directly affected parties within the notification area.

[52] The Board considered the General Purpose of the Heritage Area Zone:

. . . to establish a special heritage character Zone, in which the existing concentration of historical resources shall be preserved, rehabilitated and reused, and to ensure new developments are pedestrian friendly and compatible in scale, function, built form and design continuity with the historical, architectural and urban village character of the area.

[53] According to the evidence, the proposed development is consistent with this purpose as it will provide the landlord a steady tenant enabling him to preserve the historic building and it will add to the existing variety of pedestrian oriented amenities in this high density area. The Board also heard evidence that in this relatively small zone there are other adult oriented uses involving the distribution and consumption of alcohol including alcohol sales, bars, nightclubs, breweries, distilleries, pubs, and wineries. Finally, the point was made that given the high density and variety of uses currently authorized, the application of city-wide separation distances can be onerous and potentially contrary to Council's intent for the HA Zone.

[54] The Board also reviewed the submissions and evidence unique to each of the three variances.

[55] The Board considered the proximity of the proposed development to nearby schools. Based on the submitted evidence, the Board finds that the Boyle Street Education Centre and Centre High are schools within the meaning of section 70(2). Given the location of those two schools, the Board finds that there is not a single site where Cannabis Retail Sales (a Permitted Use within the HA Zone) can be located without a variance to the required separation distance from a school. The Permitted Use would be sterilized without a variance. The Board accepts the Appellant's argument that it was the intention of Council that this Use be available in the Heritage Area Zone and that Council did not intend for the regulations to nullify anyone's ability to develop that Use.

[56] The Board was mindful that section 70(2) was enacted to separate cannabis use from children and youth. Based on the evidence, the proposed location is as far as possible from Centre High and from the Boyle Street Education Centre. It is one of the few sites in the HA Zone which complies with the separation distance required from the Boyle Street Education Center which caters to younger teenagers. As Centre High serves fourth and fifth year high school students, the Board notes that the majority of the students will be adults. Given these facts, the Board agrees with the Appellant that the proposed

location is the most suitable location vis-a-vis Centre High for this development within the HA Zone where Council has identified it as a Permitted Use.

- [57] Next, the Board considered the proximity of the proposed development to Enterprise Square, and Edmonton Public Library. The Board finds that the allowing a 124 metres variance of the Site to Site distance between the subject Site and this library is unlikely to have a material adverse impact as according to the presented evidence the actual door to door separation distance is well over 200 metres and the Board received evidence that the library will be moving from this temporary location in 2020 and returning to a new building at its former location three blocks further to the east just south of Churchill Square.
- [58] The Board also considered the evidence concerning the two public lands zoned AP located west of the subject Site across 104 Street.
- a) Michael Phair Park, a small greenspace, is the closest at 24 metres from the subject Site.
  - b) Beaver Hills Park is larger and located adjacent to Michael Phair Park.
  - c) There is a metal public art installation in Beaver Hills Park. While the structure is large enough to climb on, it has no articulation or components which suggest it is meant to attract children as a play structure.
  - d) The two parks are used mainly by adults - specifically people walking their dogs and taking smoke breaks.
  - e) Neither park contains a playground; a sports field; a skate park or bicycle park; an outdoor theatre; an outdoor pool or water spray park; a seasonal skating rink; or an off leash area.
  - f) Some negative activities currently occur in the parks in part because they are not heavily occupied. Increased use of the parks was seen as a method to dissuade these negative activities.
  - g) Children and youths are not seen frequently in the parks; however, some families live in the area. Families do come to the area for the seasonal weekly farmer's market and more children and youths may use the parks at those times.
- [59] Based on the evidence, the Board accepts the Appellant's submission that it will be lawful for adults to smoke cannabis in the parks just as they currently smoke tobacco and that neither park fits the definition of "Parkland" where cannabis smoking is prohibited per section 12.1(1)(f) of the City of Edmonton *Public Places Bylaw*, (Bylaw 14614). The Board also accepts the evidence before it that currently these parks are not often frequented by youths or children, but are mainly used by adults. Given the submitted

evidence, the Board also finds that allowing the Cannabis Retail Sales within 24 metres of the parks is not likely to create material negative impacts for this neighbourhood.

- [60] Overall, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [61] The Board is also mindful of section 687(3)(a.4) of *Act* which states that in making this decision, it must comply with applicable requirements of the regulations under the *Gaming, Liquor, and Cannabis Act*, respecting the location of premises described in a cannabis license and distances between those premises and other premises. Based on the submissions before it, the Board finds that requirements of those regulations have been satisfied based on the Appellant's submission.
- [62] For the reasons above the Board the appeal is allowed and the proposed development is approved.

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance:

Ms. G. Harris, Mr. R. Hachigian, Mr. R. Hobson, Mr. J. Jones

cc: City of Edmonton, Development & Zoning Services, Attn: Mr. I. Welch/Mr. H. Luke  
City of Edmonton, Law Branch, Attn: Mr. M. Gunther

**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,
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