



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 23, 2018
Project Number: 287646729-001
File Number: SDAB-D-18-189

Notice of Decision

- [1] On November 8, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 18, 2018. The appeal concerned the decision of the Development Authority, issued on October 11, 2018, to refuse the following development:

Change the use from General Industrial Uses to Cannabis Retail Sales

- [2] The subject property is on Plan 3554RS Blk 3 Lot 4, located at 9835 - 63 Avenue NW, within the IB Industrial Business Zone.
- [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
 - Online responses.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [5] 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*”).
- [6] Mr. Mitchell, an interested party, mentioned that he had been at a hearing earlier this year in which Mr. Laberge was the Presiding Officer. Mr. Mitchell had raised an issue at the beginning of that previous hearing and it was ruled that the issue was irrelevant to the case; Mr. Mitchell voiced his concern that the past hearing may influence Mr. Laberge’s present determination. Mr. Laberge advised that he does not recall the case referred to or Mr. Mitchell. Mr. Mitchell acknowledged that this alleviates his concerns.

- [7] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [8] Mr. Mitchell has requested to speak; however, he is outside of the 60 metre notification area pursuant to the *Edmonton Zoning Bylaw*. The Board will first have to determine if Mr. Mitchell is an affected party as per Section 687(1)(d) of the *Municipal Government Act*.

Summary of Preliminary Item

i) Position of Mr. F. Mitchell, party in opposition to the Development

- [9] Mr. Mitchell believed he is an affected party because anyone who lives or owns property or operates a business in Edmonton has an interest in seeing that the Board properly applies the law. Mr. Mitchell is specifically concerned that many panels of the Board have been ignoring the hardship test as per Section 11.4(1)(a) of the *Edmonton Zoning Bylaw*. The Board was directed to consider this test in *Thomas v Edmonton (City)*, 2016 ABCA 57 (“*Thomas*”).
- [10] If this hardship test has not been met, the Board does not have the authority to grant a variance under Section 687(3)(d) of the *Municipal Government Act*. This is not a frivolous issue and must be considered by the Board.
- [11] Although Mr. Mitchell does not live within the 60 metre notification area, he travels through the affected intersection (99 Street and 63 Avenue) several times a week. The proposed development will increase traffic congestion at this intersection; therefore, he will be directly affected. He has not been provided with sufficient evidence to determine the exact effect that the increased traffic will cause.
- [12] He is aware that the proposed development is a Permitted Use in this zone.
- [13] Mr. Mitchell was watching a news program last week regarding a dispute coming before the Board regarding a conflict of two Cannabis Retail Sales applications being located too close to each other. He subsequently looked at the Board’s website and came across today’s agenda. He acknowledged that he decided to attend the hearing because the hearing in particular would address the issues he is concerned with.

ii) Position of the Appellant, K. Murphy and B. Lojcyk, Firestone Cannabis

- [14] The Appellants believed that the Mr. Mitchell is not an affected party and has no standing.
- [15] This is not the proper forum to discuss the legal matter of a hardship test. Mr. Mitchell said it is not frivolous issue; perhaps he should hire a lawyer and use the proper forum to address his concerns.

- [16] Simply being a user of the 99 Street and 63 Avenue intersection is not sufficient to meet the affected parties test in the *Municipal Government Act*. This intersection sees 77,000 vehicles per day and it is very unlikely that Mr. Mitchell would be affected by any traffic visiting the proposed location. In fact, they believe the proposed development will alleviate some of the current traffic issues.
- [17] The *Thomas* case Mr. Mitchell referred to clearly states the hardship test does not apply.
- [18] The Board should consider that Mr. Mitchell lives outside of the 60 metre notification area.

Decision of Preliminary Item

- [19] The Board has determined that Mr. Mitchell is not an affected party.

Reasons for Decision

- [20] Section 687(1) of the *Municipal Government Act* outlines who the Board must hear from:

687(1) At a hearing under section 686, the subdivision and development appeal board must hear

- (a) the appellant or any person acting on behalf of the appellant,
- (b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,
- (c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and
- (d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

- [21] The Board is obligated to consider section 687(1)(d) of the *Municipal Government Act* to determine if he Mr. Mitchell is an affected party. The Board has concluded Mr. Mitchell is not an affected party for the following reasons:

- a) Mr. Mitchell lives outside of the 60 metre notification area prescribed in section 20 of the *Edmonton Zoning Bylaw*. It was clear through Mr. Mitchell's presentations that he did not receive notice of this appeal and was not acting on behalf of another affected party within the 60 metre notification area.
- b) Mr. Mitchell's reasons as to why he believes he is an affected party are contained within two paragraphs on page 1 of 7 of his written submission. It is his belief that he and every resident of Edmonton have a right to appeal any decision that may have a legal issue or a variance to any regulation. Secondly, within his

presentation, he infers that using 99 Street and 63 Avenue is reason enough for him to be an affected party. The Board disagrees as it heard submissions from the Appellants that there are 77,000 users of that intersection per day.

- c) Mr. Mitchell wanted to raise legal issues that would somehow make him an affected party. The Board concurs with the Appellants that this is not the forum to raise these issues.
 - d) Mr. Mitchell, in his presentation, stated that he chose this hearing through a random choice, not whether he was an affected party or not. This particular appeal involved the legal question he was interested in. The Board does not believe that having an interest in a topic equates sufficiently to being an affected party.
- [22] Given the above, the Board has concluded that Mr. Mitchell is not an affected party as prescribed in 687(1)(d) and will not hear from him.

Summary of Hearing

iii) Position of the Appellants, M. Murphy and B. Lojcyk

- [23] Mr. Murphy and Mr. Lojcyk are here representing 2102818 Alberta Ltd. (operating as Firestone Cannabis).
- [24] They agree with the calculated separation distance from another Cannabis Retail Sales Use and with the method of calculation used by the Development Officer. The Development Officer has the discretion to grant a 20 metre variance; they require a 28 metre variance and they believe it is reasonable for the Board to grant the additional 8 metres variance required.
- [25] The proposed development is in full compliance with the locational requirements of section 105(3) of the *Gaming, Liquor, and Cannabis Regulation*, AR 143/96.
- [26] The only issue is non-compliance with Section 70(1) of the *Edmonton Zoning Bylaw*. However, the Board is able to grant a variance if it 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 as per section 687(3)(d) of the *Municipal Government Act*. Mr. Murphy and Mr. Lojcyk are confident that the proposed development meets this test.
- [27] They referred to *Thomas v Edmonton (City)*, 2016 ABCA 57 which states:

However, 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 section 687(3)(d) of the *Municipal Government Act*.

- [28] The proposed development is a Permitted Use in the (IB) Industrial Business Zone.
- [29] They referred to a satellite view of the 99 Street and 63 Avenue intersection to provide context as to the location of the proposed development and the existing Cannabis Retail Sales to the west. The surrounding area is comprised of industrial and commercial uses. 99 Street and 63 Avenue each have 4 lanes of traffic divided by medians. The nature of this intersection clearly creates four distinct quadrants.
- [30] There are many similar types of business in each of the different quadrants that all operate independently. For example, there is a lounge and a liquor store in both the SW and SE quadrant. They are separated by a large parking lot and the busy intersection.
- [31] The strip mall in which the proposed business will be located consists mainly of other 'adult' or age-restricted uses such as a lounge and a liquor store. The owner of these businesses is also their landlord and has no issue with the proposed development.
- [32] 77,000 cars a day travel through this intersection and it is difficult to make a left hand turn into any of the quadrants. Their proposed development may alleviate potential left hand turns. People travelling north on 99 Street or east on 63 Avenue can make a right hand turn into their location if they wish to purchase cannabis rather than turning left into the southwest quadrant where the existing Cannabis Retail Sales is located.
- [33] A report prepared for the Urban Planning Committee in April of this year stated that the clustering of cannabis stores should be avoided. They believe this report was mainly geared towards Whyte Avenue and Jasper Avenue. Administration did not want to have cannabis stores on every street corner. They believe there is no clustering created by their proposed development due to the large intersection breaking up the different quadrants.
- [34] The City of Edmonton used a 200 metre buffer zone between Cannabis Retail Sales as that is the average size of a city block. The two Cannabis Retail Sales in question are clearly on different blocks.
- [35] The Development Officer did not give any reason for refusing the development other than he simply does not have the authority to grant the required variance.
- [36] The Appellants provided the following responses to questions from the Board:
- a) No letters of opposition were received from neighbouring tenants or from the residential area across 63 Avenue to the north. The only opposition received was from Mr. F. Mitchell. In fact, there is more support than opposition to the proposed development. Their business partner owns the entire strip mall as well as the lounge in this strip mall. She has spoken with the other tenants and they are all aware of their plans.

- b) They meet all of the parking requirements.
- c) Given the volume and speed of traffic on 99 Street and 63 Avenue, they would characterize these as arterial roads.
- d) They have reviewed the proposed conditions of the Development Officer and have no objections to any of them.
- e) The Appellants confirmed that the proposed development could meet the required separation distance by simply relocating to another bay in this same strip mall.
- f) The previous tenant at their proposed location was a locksmith. They agreed that their business may result in increased traffic when compared to this previous tenant but it would be immaterial given that there are 77,000 vehicles per day passing by. Any increase in traffic would be a very small percentage.
- g) They believe the four separate zones created by the large intersection satisfy the requirement that there will not be a clustering of Cannabis Retail Sales.

iv) Position of the Development Officer, I. Welch

[37] The Development Authority did not attend the hearing and the Board relied on Mr. Welch's written submission.

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*).

NOTES:

1. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments

- such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
 3. Signs require separate Development Applications.
 4. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representation 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.
 5. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
 6. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

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

- a) The minimum required 200 metres separation distance between the Cannabis Retail Sales from another Cannabis Retail Sales pursuant to Section 70(1) is reduced by 28.0 metres to permit a minimum allowed separation distance of 172.0 metres.

Reasons for Decision

[40] The proposed development is to change the Use from General Industrial Uses to Cannabis Retail Sales. The Subject Site is located in the IB Industrial Business Zone. Pursuant to section 400.2(3) of the *Edmonton Zoning Bylaw* (the “*Bylaw*”), Cannabis Retail Sales is a Permitted Use in this Zone.

[41] The proposed development is in keeping with the General Purpose of the (IB) Industrial Business Zone. It is, as Section 400.1 states: to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses. This Zone should

normally be located on the periphery of industrial areas and adjacent to arterial or major collector roadways.

- [42] Cannabis Retail Sales is subject to regulations under the *Gaming, Liquor, and Cannabis Regulation*, AR143/96. Section 105 deals with the locations of premises described in a cannabis licence and distances between those premises and certain other premises.
- [43] Based on the Appellant's submissions, the Board finds that requirements of those regulations have been satisfied and it has met section 687(3)(a.4) of the *Municipal Government Act* (the "Act") which requires that in making this decision, the Board must comply with those requirements.
- [44] During their presentation, the Appellants agreed with the measurements of the Development Officer and agree that there is a deficiency of 28 metres in the required separation distance from another Cannabis Retail Sales. It was also noted that the Development Authority's variance power to this separation distance is limited to 20 metres as per Section 70(1)(b) of the *Edmonton Zoning Bylaw*:
- 70(1)(b) A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11.
- [45] As discussed during the hearing, the Alberta Court of Appeal case *Thomas v Edmonton (City)*, 2016 ABCA 57, advises against strict readings of regulations which can create unreasonable results. This was considered by the Board.
- [46] The only presentation of public opposition or support for the proposed development was the letter of opposition from Mr. Mitchell. There was no correspondence in support or in opposition from anyone who received notice of the hearing, neighbouring businesses or from the community league.
- [47] The test of this Board when considering the variance required for this development is section 687(3)(d) of the *Municipal Government Act*. It was demonstrated to the Board's satisfaction by the Appellants that the requested 28 metre variance 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 for the following reasons:
- a) The nature of this particular site is one of high traffic volume approaching 77,000 trips per day on the arterial roads of 63 Avenue and 99 Street. There are two lanes of traffic in each direction as well as concrete median barriers and a lack of left hand turning opportunities.
 - b) It was suggested by the Appellants and accepted by the Board that the nature of this traffic volume and the design of this intersection in effect created quadrants which separated the interconnectedness of the area. As a result, granting this development would not result in a clustering of Cannabis Retail Sales.

- c) It was presented to the Board that while there may be some incremental increase in traffic compared with the previous business in this location, such increase in traffic would be negligible compared with the overall nature of the area.
- d) It was also accepted by the Board that the proposed development is compatible with the current nature of businesses in the adjoining area, which include other age restricted businesses such as a pawn shop, tattoo parlor, lounges and alcohol sales.
- e) There have been no concerns presented to the Board regarding the proposed development from the landlord or other tenants of the strip mall.
- f) Given the size and the siting of this strip mall, it was noted by the Board that this proposed development could exist in a different location within the same strip mall that would avoid the separation variance required for this particular location.

[48] For the above reasons, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

S. LaPerle, C. Buyze, D. Fleming, L. Gibson

CC: Development & Zoning Services – I. Welch / H. Luke / M. Gunther
F. Mitchell

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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



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SDAB-D-18-190

Application No. 287023706-001

An appeal to Change the use from Minor Alcohol Sales to Cannabis Retail Sales located at 14161 – 23 Avenue NW was **WITHDRAWN**



**EDMONTON
TRIBUNALS**

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Date: November 23, 2018
Project Number: 288507897-001
File Number: SDAB-S-18-011

Notice of Decision

- [1] On November 8, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 18, 2018**. The appeal concerned the decision of the Subdivision Authority, issued on October 11, 2018 to refuse the following subdivision:

Create (1) additional Single Detached Residential Lot.

- [2] The subject property is on Plan 3624HW Blk 9 Lot 4, located at 10954 - 135 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood 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 Subdivision refusal and tentative plan;
 - The Subdivision Authority’s written submissions; and
 - The Appellant’s written submission.

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 678 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. J. Kumar*

- [7] Mr. Kumar appeared on behalf of Exclusive Construction.
- [8] Before acquiring the property Mr. Kumar met with Ms. C. Potter, Development Officer, and showed her the Real Property Report and advised her of his subdivision plans. She stated that the proposed lots would be deficient by about 1 ½ inches but he should not have a problem receiving the variances upon application.
- [9] The previous house has already been demolished.
- [10] After preparing the drawings he received the decision of refusal from the Subdivision Authority. He feels that he has been misled and was not given the correct information. Mr. G. Quashie-Sam of the Subdivision Authority advised him to appeal the Subdivision Authority's decision of refusal.
- [11] Mr. Kumar provided the following responses to questions from the Board:
- i) He felt he has done his due diligence because he spoke with the Development Officer between June 23 and June 30, 2018. He acquired the subject property on July 17, 2018, because he was of the belief that the required variances would be granted.
 - ii) He has spoken with the immediate neighbour to see if he can obtain an additional one foot of land; however this request has not been replied to.

ii) Position of the Subdivision Authority, Mr. K. Witiw and Mr. G. Quashie-Sam

- [12] Mr. Quashie-Sam referred to various maps in his presentation showing that the subject parcel is surrounded by residential development to the north, a church directly to the south and low rise apartment buildings to the southeast and the southwest.
- [13] The width of other lots in the immediate vicinity varies from 13.7 metres to over 20 metres. The tentative plan shows that each of the proposed parcels will be 7.46 metres in width.
- [14] Photos in the Subdivision Authority's presentation show the recently demolished house and the interfering power pole and guy wire at the rear of the property. As per the *Edmonton Zoning Bylaw* vehicle access must be to the alley. If the subdivision is approved, the Appellant would have to contact EPCOR to have this power pole and guy wire relocated.

- [15] This application was refused because the proposed 7.46 metres does not meet the minimum required site width of 7.5 metres as set by City Council. The Subdivision Authority has no discretion to grant a variance in these cases.
- [16] The Subdivision Authority prefers not to pass down problems to the Development Authority. Section 11.4(1)(c) of the *Edmonton Zoning Bylaw* would require the Development Officer to automatically refuse any proposed development that does not meet the minimum required 7.5-metre site width.
- [17] Mr. Witiw stated that the refusal is purely a bureaucratic decision; at issue is a deficiency of four centimetres. Prior to the enactment of the current regulations in the *Edmonton Zoning Bylaw* the Subdivision Authority would have approved the application with conditions.
- [18] He requests that the Board include the proposed conditions and advisements as per their written submission should this subdivision be granted. The first condition would not be required as the building has already been demolished.
- [19] The Subdivision Authority provided the following responses to questions from the Board:
- a) Council made a conscious decision in June 2017, to remove the Development Officer's discretion to vary the minimum required site width. He believes this decision was made to make lot splitting and subdivision as inclusive as possible and to place some firm limits.
 - b) A determination was made by administration that the predominant built form in Edmonton was 50 foot wide lots. There continues to be a lot of difficulty among residents who have lived in an area for 30 to 40 years with accepting new forms of housing and that resulted in the minimum 7.5-metre site width being implemented. Council already reduced this by 10 centimetres from the original minimum 7.6-metre site width requirement.
 - c) There is a wide range of site widths in this neighbourhood. There have been no lot splits in the immediate vicinity and none have been conditionally approved that they are aware of.
 - d) There are approximately 20 semi-detached homes in the neighbourhood.
- iv) *Rebuttal of the Appellant, Mr. J. Kumar*
- [20] Mr. Kumar has already contact EPCOR regarding the power pole and guy wire at the rear of the property. They are willing to re-locate these and have provided him with a quote. He has not given EPCOR the go-ahead pending the outcome of his appeal.

- [21] New skinny houses and new housing forms are coming into North Glenora. Eight new skinny houses are currently being built one block away at 108 Avenue and 135 Street.

Decision

- [22] The appeal is **ALLOWED** and the decision of the Subdivision Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority, subject to the following **CONDITION** requested by the Subdivision Authority:
- a) That the owner pays all outstanding property taxes prior to the endorsement of the plan of survey.
- [23] In granting the subdivision the following variance to the *Edmonton Zoning Bylaw* (the *Bylaw*) is allowed:
- a) The minimum Site Width per section 110.4(1)(b) is varied to allow a deficiency of 0.04 metres, thereby decreasing the minimum required Site Width to 7.46 metres for each of the two Lots.

Reasons for Decision

- [24] The Appellant applied for a subdivision to create one additional Single Detached Residential Lot by splitting a current Site into two Lots, each 7.46 metres in Site Width.
- [25] According to the letter of refusal dated October 11, 2018, the Subdivision Authority refused the application because it will result in a Site Width of 7.46 metres for each of the Lots which does not comply with the minimum 7.5 metres required Site Width for the (RF1) Single Detached Residential Zone under section 110.4(1)(b) of the *Bylaw*.
- [26] The Subdivision Authority did not want to approve the subdivision and thereby download a problem to the Development Authority. They did not wish to create an unnecessary hardship or practical difficulty pursuant to section 11.4 of the *Bylaw* which expressly limits the Development Authority's variance authority concerning Site Width in this Zone under section 11.4(1)(c) of the *Bylaw* which states:
- on rectangular shaped Lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1, RF2, RF3, and RF4 Zones for all Sites which received subdivision approval after June 12, 2017.
- [27] The Board concurs that section 11.4 of the *Bylaw* limits the Development Authority's discretion to grant variances for specific Development Permit Applications. However, the Subdivision Authority and this Board have a different authority. This Board is not obligated to refuse an application for subdivision on this basis.

[28] The Board's jurisdiction in this appeal comes from section 680(2) of the *Municipal Government Act* which outlines its responsibilities and authority in appeals of refused subdivision applications. It provides:

- (2) In determining an appeal, the board hearing the appeal
 - (a) must act in accordance with any applicable ALSA regional plan;
 - (a.1) must have regard to any statutory plan;
 - (b) must conform with the uses of land referred to in a land use bylaw;
 - (c) must be consistent with the land use policies;
 - (d) must have regard to but is not bound by the subdivision and development regulations;
 - (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
 - (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

[29] Per section 680(2)(f), the Board is delegated the same authority that the Subdivision Authority had when making the original decision. This authority is found in section 654 of the *Municipal Government Act* which provides in part:

- (2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,
 - (a) the proposed subdivision would not
 - (i) unduly interfere with the amenities of the neighbourhood, or
 - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,and
 - (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

[30] It was accepted by all that the proposed subdivision conforms with the Uses for land prescribed in sections 110.2 and 110.3 of the *Bylaw*. However, the Lots created by the proposed subdivision will make it impossible to comply with the specific development regulation of the *Bylaw* regarding minimum Site Width found in section 110.4(1)(b).

- [31] The Board's concern with the Subdivision Authority's decision is in part a question of the *de minimis* nature of the deficiency. Each Lot would be deficient by four centimetres. As set out in section 654(2)(a) of the *Municipal Government Act*, that regulation need not bind this board if the Board finds that granting a variance to that regulation will not unduly interfere with neighbourhood amenities, nor create a material adverse interference or material impact on the use, enjoyment or value of neighbouring properties.
- [32] The Board grants the variance for the following reasons:
- a) The Board could find no evidence that the granting of a four centimetre variance would be detectable by anyone either living in the neighbourhood or driving through the neighbourhood.
 - b) It is difficult to say that a variance this small would create a **material** impact or would **unduly** interfere with the neighbourhood amenities. The Board finds that a four centimetre variance will not provide any material impact or undue interference.
 - c) The Board notified eight adjacent property owners as well as the North Glenora Community League. No concerns were raised or objections registered by any of these adjacent land owners.
 - d) The Board also notes that the subject Site abuts a large RA7 Low Rise Apartment Zone and also abuts to the east an RF5 Row Housing Zone. Both of these Zones allow significantly higher densities of development meaning that allowing the subdivision of this Site in the RF1 Single Detached Residential Zone would in some ways act as a transition type of development between the RF1 Single Detached Residential Zone and the RA7 Low Rise Apartment Zone and RF5 Row Housing Zone to which it abuts.
- [33] For these reasons, the Board grants the variance and allows the appeal.

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

Board Members in Attendance

Ms. S. LaPerle, Mr. C. Buyze, Mr. D. Fleming, Ms. L. Gibson

cc: Subdivision Authority – Mr. G. Quashie-Sam / Mr. B. McDowell / Mr. K. Witiw
City of Edmonton, Law Branch – Mr. M. Gunther

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.