

SUBDIVISION

AND

DEVELOPMENT APPEAL BOARD

AGENDA

November 10, 2021

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

I 9:00 A.M. SDAB-D-21-183

Change the Use from a General Retail Store
(Scarpe Diem Shoes), to a Liquor Store and
construct interior alterations (Good Brews Project)

10238 - 124 Street NW
Project No.: 406828482-002

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

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 406828482-002

APPLICATION TO: Change the Use from a General Retail Store (Scarpe Diem Shoes), to a Liquor Store and construct interior alterations (Good Brews Project)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 14, 2021

DATE OF APPEAL: October 20, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10238 - 124 Street NW

LEGAL DESCRIPTION: Plan RN22 Blk 33 Lots 17-20

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

Please accept this letter as an expression of our intent to appeal the Development Permit Decision (refusal) for DP 406828482-002. The purpose of this DP application was to change the existing use at 10238 - 124 Street NW from General Retail Store to Liquor Store and to construct interior alterations. The property is zoned CB1 – Low Intensity Business Zone, with Liquor Stores being a Discretionary Use.

The Development Officer (DO) refused this DP application based on Section 85.1 of the City of Edmonton's Zoning Bylaw 12800, which stipulates a minimum required distance of 500 m between Liquor Store uses. As noted on the DP, there are already four approved Liquor Stores within 500m of the proposed site, which triggered the refusal from the DO. We believe there is a strong case to be made that the proposed location merits an approved Liquor Store use.

The rationale for this Appeal is that the separation distances between the proposed Liquor Store use from three of the four Liquor Stores represent small variances from the required distances (5%, 10% and 13% deficiencies). When factoring in building orientation and practical separation distances, including travel distance by pedestrians, cyclists or by vehicles, the required 500m separation distances are met.

Secondly, the nature of the proposed Liquor Store varies greatly from those that are in proximity – Good Brews intends to only sell local craft beer. This differs from the other Liquor Stores nearby that focus on wine, spirits, or domestic and imported beer primarily. Good Brews aims to target a different demographic of consumers entirely, and is therefore a different kind of Liquor Store than what is found nearby.

Lastly, the population density in the Westmount and Oliver neighbourhoods can support additional Liquor Stores, especially those that offer different products. The proposed location meets all other separation distances required in the Zoning Bylaw, including from schools and parks. It will not materially impact the use and enjoyment of nearby properties, and will contribute to supporting local businesses and residents. We look forward to the opportunity to make our case further at the hearing.

<i>General Matters</i>

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

...

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

Appeals

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

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;

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

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 330.3(16), a **Liquor Store** is a **Discretionary Use** in the **(CB1) Low Intensity Business Zone**.

Under section 7.4(30), **Liquor Store** means “development used for the retail sale of any and all types of alcoholic beverages to the public for off-site consumption. This Use may include retail sales of related products such as soft drinks and snack foods.”

Section 330.1 states that the **General Purpose** of the **(CB1) Low Intensity Business Zone** is:

to provide for low intensity commercial, office and service uses, and limited Residential-related Uses located along arterial roadways that

border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

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

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

<i>Section 85 - Liquor Stores</i>
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1. **Any Liquor Store shall not be located less than 500 m from any other Liquor Store.**
2. Notwithstanding subsection 85(1), a Liquor Store may be located less than 500 m from any other Liquor Store if located:
 - a. outside the boundary shown in Appendix 1 to Section 85, provided:
 - i. the Liquor Stores are located on separate Sites, and
 - ii. at least one Liquor Store is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.
3. For the purposes of Section 85, the 500 m separation distance shall be measured from the closest point of the Liquor Store to the closest point of any other approved Liquor Store.
4. Any Site containing a Liquor Store shall not be located less than 100 m from any Site being used for community or recreation activities, public or private education, or public lands at the time of the application for the Development Permit for the Liquor Store. Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, are exempt from this restriction. For the purposes of this subsection only:
 - a. the 100 m 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 or recreation activities" is limited to Community Recreation Services, as defined in subsection 7.8(1) of this Bylaw, which includes community league buildings and facilities, and children's playgrounds and play areas. This term does not include arenas or other

- public assembly Uses, Child Care Services, Public Libraries and Cultural Exhibits, or Religious Assembly;
- c. the term "public or private education facilities" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools; and
 - d. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.
5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 85(4).
 6. Notwithstanding Section 11 of this Bylaw, a Development Officer shall only grant a variance to subsection 85(1) or subsection 85(2) as outlined in subsections 85(7), 85(8) and 85(9).
 7. When the Development Officer receives an application for a Development Permit that is for the purpose of accommodating the temporary relocation of an approved Liquor Store within 500 m of its original location, a variance to subsection 85(1) or subsection 85(2) may be granted where:
 - a. the application for the Development Permit is for a Temporary Development, in order to limit the introduction of an additional Liquor Store within 500 m of the original approved Development Permit;
 - b. the temporary location for any Liquor Store is not within 500 m of any legally conforming Liquor Store; and
 - c. the application for a Development Permit will not result in a total Floor Area for a Liquor Store that is 10.0% greater than the Floor Area of the existing approved Liquor Store, to a maximum increase of 50 m².
 8. When a Development Officer receives an application for a Development Permit that is for the purpose of accommodating the reversion of an existing approved Liquor Store back to its original location on a Site, a variance of subsection 85(1) or subsection 85(2) may only be granted where the application for the reversion is submitted to the Development Officer within 5 years of the date of vacating the original location and the application will not result in a total Floor Area that is greater than the original approved Liquor Store.
 9. The issuance of a Development Permit which contains a variance pursuant to subsection 85(7) shall be issued as a Temporary Development for a duration of up to 5 years or less, to be determined by the Development Officer.
 10. The Development Officer may require lighting, signage or screening measures that ensure the proposed development is compatible with adjacent or nearby Residential Uses or Commercial Uses.

11. Liquor Stores shall include the following to allow for natural surveillance to promote safe surroundings:
 - a. Customer access is oriented to:
 - i. a public or internal roadway, other than a Lane;
 - ii. a shopping centre parking lot in front of the store; or
 - iii. a mall access that allows visibility from the interior of the mall into the store.
 - b. Premises located at ground level shall include:
 - i. Ample transparency to maintain sight lines into and out of the premises. To ensure transparency and sight lines are maintained:
 1. Not more than 10% of the windows may be covered by Signs, the remainder shall be clear, untinted, and free from obstruction.
 - ii. Outdoor lighting is required to provide a well-lit environment for pedestrians entering and exiting the premises and to illuminate the property. The Development Officer shall require the applicant to provide a plan showing the location and details of perimeter lighting to ensure adequate lighting.
 - iii. Landscaping shall be located such that it does not obstruct sight lines into the premises.

Development Officer's Determination

1. Section 85.1 Liquor Stores shall not be located less than 500 m from any other Liquor Store:

**12421 102 Ave NW
Proposed: 150 m
Required: 500 m
Deficient: 350m**

**12110 Jasper Ave NW
Proposed: 436 m
Required: 500 m
Deficient: 64 m**

**10505 123 Street NW
Proposed: 449 m
Required: 500 m
Deficient: 51 m**

12068 Jasper Ave NW

Proposed: 472 m
Required: 500 m
Deficient: 28 m


[unedited]


Previous Subdivision and Development Appeal Board Decision

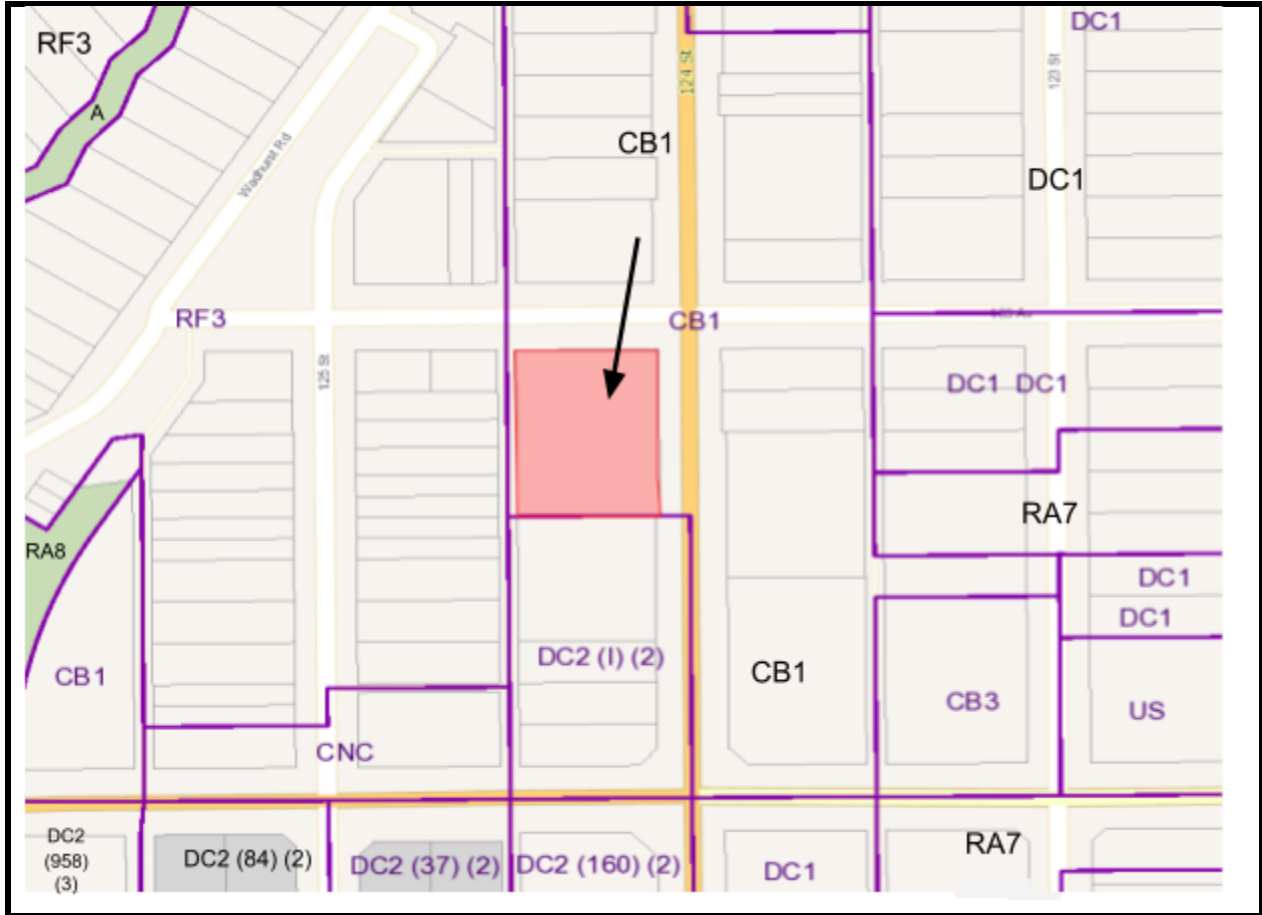
Application Number	Description	Decision
SDAB-D-12-333	Change the use from a Restaurant to a Bar and Neighbourhood Pub (no interior alterations)	December 21, 2012; the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED, subject to the following amendment: Variance: 1. The minimum required total number of parking spaces for all Uses on the subject site is 493 parking spaces, existing is 117 parking spaces, and a relaxation of 376 parking spaces is granted.

Notice to Applicant/Appellant

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

	Project Number: 406828482-002 Application Date: AUG 27, 2021 Printed: October 20, 2021 at 12:40 PM Page: 1 of 2								
<h2>Application for Major Development Permit</h2>									
This document is a Development Permit Decision for the development application described below.									
Applicant	<table border="1" style="width: 100%;"> <tr> <td colspan="2" data-bbox="828 428 1237 508"> Property Address(es) and Legal Description(s) 10238 - 124 STREET NW Plan RN22 Blk 33 Lots 17-20 </td> </tr> <tr> <td colspan="2" data-bbox="828 516 1010 546"> Specific Address(es) </td> </tr> <tr> <td data-bbox="828 554 1133 583"> Suite: 10240 - 124 STREET NW </td> <td data-bbox="828 583 1133 613"> Entryway: 10240 - 124 STREET NW </td> </tr> <tr> <td colspan="2" data-bbox="828 613 1133 642"> Building: 10238 - 124 STREET NW </td> </tr> </table>	Property Address(es) and Legal Description(s) 10238 - 124 STREET NW Plan RN22 Blk 33 Lots 17-20		Specific Address(es)		Suite: 10240 - 124 STREET NW	Entryway: 10240 - 124 STREET NW	Building: 10238 - 124 STREET NW	
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Permit Details <table border="1" style="width: 100%;"> <tr> <td data-bbox="282 798 483 898"> Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.): </td> <td data-bbox="824 798 1084 898"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Asses Area: (none) </td> </tr> </table>		Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Asses Area: (none)						
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Development Application Decision Refused Issue Date: Oct 14, 2021 Development Authority: CHOW, STEPHEN Reason for Refusal 1. Section 85.1 Liquor Stores shall not be located less than 500 m from any other Liquor Store: 12421 102 Ave NW Proposed: 150 m Required: 500 m Deficient: 350m 12110 Jasper Ave NW Proposed: 436 m Required: 500 m Deficient: 64 m 10505 123 Street NW Proposed: 449 m Required: 500 m Deficient: 51 m 12068 Jasper Ave NW Proposed: 472 m Required: 500 m Deficient: 28 m									
THIS IS NOT A PERMIT									

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<p>Rights of Appeal The Applicant has the right of appeal to the Subdivision and Development Appeal Board (SDAB) within 21 days after the date on which the decision is made as outlined in Chapter M-26, Section 683 through 689 of the Municipal Government Act.</p>																						
<p>Fees</p> <table border="1"><thead><tr><th></th><th style="text-align: right;">Fee Amount</th><th style="text-align: right;">Amount Paid</th><th style="text-align: left;">Receipt #</th><th style="text-align: left;">Date Paid</th></tr></thead><tbody><tr><td>Major Dev. Application Fee</td><td style="text-align: right;">\$528.00</td><td style="text-align: right;">\$528.00</td><td>154360434271001</td><td>Sep 23, 2021</td></tr><tr><td>Total GST Amount:</td><td style="text-align: right; border-top: 1px solid black;">\$0.00</td><td></td><td></td><td></td></tr><tr><td>Totals for Permit:</td><td style="text-align: right; border-top: 1px solid black; border-bottom: 1px solid black;">\$528.00</td><td style="text-align: right; border-top: 1px solid black; border-bottom: 1px solid black;">\$528.00</td><td></td><td></td></tr></tbody></table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$528.00	\$528.00	154360434271001	Sep 23, 2021	Total GST Amount:	\$0.00				Totals for Permit:	\$528.00	\$528.00		
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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-21-183

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N