

## **EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Citation: Pattison Outdoor Advertising v Development Authority of the City of Edmonton, 2019 ABESDAB 10142

Project Number: 326740488-001

File Number: SDAB-D-19-198

To Install a Freestanding Minor Digital On-premises Off-premises Sign (4.9m x 6.1m, incl digital panel 3m x 6.1m facing N) (PATTISON - TOOR HOLDINGS INC.) was **TABLED** to December 10, 2019.

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Allard Developments v Development Authority of the City of Edmonton, 2019  
ABESDAB 10198

Date: November 27, 2019  
Project Number: 326740488-001  
File Number: SDAB-D-19-198

Between:

Allard Developments

and

The City of Edmonton, Development Authority

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### Board Members

Gwen Harris, Presiding Officer  
Rohit Handa  
Don Fleming  
Rick Hachigian  
James Kindrake

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### DECISION

[1] On November 13, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 22, 2019 for an application by Planworks Architecture Inc. The appeal concerned the decision of the Development Authority, issued on October 8, 2019, to refuse the following development:

**To change the Use from a General Retail use to a Cannabis Retail Sales and to construct interior alterations.**

[2] The subject property is on Plan 1522818 Blk 3 Lot 2, located at 11803 - 26 Avenue SW, within the (TC-C) Heritage Valley Town Centre Commercial Zone. The Special Area, Heritage Valley Town Centre and the Heritage Valley Town Centre Neighbourhood Area Structure 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;
- Written submissions from Legal Counsel for the Appellant; and
- A written submission from the Edmonton Public Library.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Copy of the Separation Distance Map edited by Legal Counsel for the Appellant.

### **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.

### **Summary of Hearing**

*i) Position of the Appellant, R. Noce, Miller Thomson LLP representing B. Clough, President of Allard Developments, the property owner*

[8] The proposed Cannabis Retail Sales will be located in a shopping centre. The site is comprised of three abutting lots that will be integrated into one shopping centre that will be approximately 11 hectares in size when completely built out.

[9] The Development Officer refused the proposed development because he did not have the authority to vary the minimum setback regulations contained in section 70 of the *Edmonton Zoning Bylaw* (the "*Bylaw*"). Therefore, the Development Officer did not consider or assess the validity of the required variance at this location.

[10] Cannabis Retail Sales is a Permitted Use in the (TC-C) Heritage Valley Town Centre Commercial Zone. In September 2018, Council amended the *Bylaw* to include Cannabis Retail Sales as a Permitted Use in the TC-C Zone. Council made this amendment with full knowledge of the existence of a Library at this location.

[11] The General Purpose of the (TC-C) Heritage Valley Town Centre Commercial Zone is to:

Create a high quality, pedestrian-friendly commercial development in accordance with the Objectives and Policies of the Heritage Valley Town Centre Neighbourhood Area Structure Plan. This Zone will allow for a mix of large, medium and/or small format retail, office, entertainment, cultural and institutional Uses recognizing the proximity and prominence of the transit node (LRT station and bus facilities) within the Heritage Valley Town Centre.

- [12] The developer originally applied to rezone the site to (CSC) Shopping Centre Zone but was directed by Council to come forward with a Direct Control application because of the proximity to a future LRT station.
- [13] The proposed development is fully compliant with the *Gaming, Liquor and Cannabis Act and Regulation*.
- [14] Section 687(3)(a.4) of the *Municipal Government Act* indicates that a Subdivision and Development Appeal Board must comply with the applicable requirements of the regulations under the *Gaming Liquor and Cannabis Act* respecting the location of premises described in the cannabis licence and distances between those premises and other premises. The proposed development is fully complaint with those requirements.
- [15] The Board has the authority to vary any development regulation contained in the *Bylaw* pursuant to 687(3)(d) of the *Municipal Government Act*. The Board may vary, where in its opinion, the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [16] The decision of the Court of Appeal in *Thomas v Edmonton (City)*, 2016 ABCA 57 explains the Board's variance powers pursuant to section 687(3)(d) of the *Municipal Government Act*. Paragraph [29] states that:

. . . 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) are met.

- [17] The decision of the Court of Appeal in *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 also helps to explain the Board's variance powers. Paragraphs [6] and [7] state:

. . . We, the Board, have a power to grant variances, but the bylaw creates a presumption of harm to the public, and we the Board cannot intervene unless that presumption is rebutted by the applicant. That is an error.

The legal test for such waivers is in the *Municipal Government Act*, and is clear. Section 687(3)(d) mandates this test:

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 . . .

- [18] These decisions are still the law in Alberta and the law that must be applied by the Board.
- [19] Council did not create these separation distance requirements based on a presumption of harm. They are rather just numbers that have been deemed to be appropriate.
- [20] The proposed Cannabis Retail Sales will be operated by Alcanna Cannabis Stores Limited Partnership. Its affiliated companies have been a liquor retailer in Alberta since privatization. Alcanna is an Edmonton based, TSX listed public company and an active member of the community.
- [21] Eleven Nova Cannabis stores have been opened in Alberta since cannabis was legalized in October 2017. Nova stores go above and beyond the required regulations by making the corporate decision to close all of their stores by 10:00 p.m. despite regulations that would allow the stores to remain open later.
- [22] The leased unit is approximately 2,600 square feet in size in a 5,000 square foot building. A fast food outlet is proposed for the remainder of the building.
- [23] Photographs were referenced to illustrate the proposed store front, front window inserts, the floor layout, and the vault which provides the secure storage of product as required by the regulations. The drive aisle for the fast food restaurant separates the building from the public roadway.
- [24] The subject location is appropriate for Cannabis Retail Sales especially when compared to other options in the area. The proposed location is in a building located in a full shopping centre with ample parking and it will not conflict with any other use in the shopping centre.
- [25] The building that houses the proposed Cannabis Retail Sales store is not visible from the interior or the exterior of the Library and vice versa. The entrances to each of the buildings are on opposite sides and an individual would have to cross two roads to reach the other building. The walking distance door-to-door is 160 metres. There is parking in front of the Library and ample parking in front of the proposed Cannabis Retail Sales store.
- [26] The distance between the buildings “as the crow flies” is 110 metres.
- [27] Photographs were referenced to illustrate the door-to-door walk from the site of the proposed store to the Library. The Library cannot be seen when standing in the parking lot in front of the drug store.

- [28] There is a Real Canadian Superstore Liquor Store located directly across the street from the library. There is no entrance to the Library on the north or east side of the building.
- [29] The Heritage Valley Library is a small 3,200 square foot storefront location. The Library offers some program services but is predominantly used for core Library services such as book drop-off, and the pick-up of books.
- [30] The setback violation is technical in nature because the proposed development and the Library are on the same site. If the Library is allowed to bar this application, it would lead to the removal of this Permitted Use because the separation distance requirements could never be met.
- [31] Council amended section 70 of the *Bylaw* in February 2019. One of the amendments was that for Sites that are greater than 2.0 hectares in size and zoned either CSC or DC2, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales: (i) subsection 70(2), and 70(4) shall not apply; and (ii) the distances referred to in subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 metres. If the Library was not here already, this development would be approved and the Library could be developed after.
- [32] The Library is located across the street from a Real Canadian Superstore Liquor Store that is 7,000 square feet in size, double the size of the Library and triple the size of the proposed Cannabis Retail Sales store. Children can look in the windows of the Liquor Store and see the products and can also be taken inside the store which is not permitted for a Cannabis Retail Sales store. No evidence was provided by either the Development Officer or the Edmonton Public Library that the Liquor Store has resulted in any anti-social behavior occurring in front of the Library.
- [33] Photographs were referenced to illustrate that the only entrance to the Library is located on 28 Avenue SW, 100 metres from the site of the proposed Cannabis Retail Sales store. The two buildings are separated by other buildings and commercial uses as well as internal roads and sidewalks.
- [34] The City of Edmonton *Public Places Bylaw* prohibits smoking of any tobacco product or cannabis inside a building or within 10 metres of a doorway or window of a building. Smoking of tobacco or cannabis is not allowed on patios, in public vehicles or on any school property.
- [35] The separation distance map provided by the Development Officer was referenced and marked as *Exhibit A* to illustrate the exact location of the 3,200 square foot bay in which the Library is located.
- [36] Mr. Noce and Mr. Clough provided the following information in response to questions from the Board:

- a) The history of the creation of minimum separation distances as it was for separation distances for Liquor Stores when they were privatized in 1993 is a way for a Council to provide a voice to communities. However, it is simply a number and evidence has to be provided that varying that number would result in harm.
- b) In this case, Council has allowed Cannabis Retail Sales Use as a Permitted Use at this location. Evidence has been provided that it will not be harmful to vary the separation distance requirements because of the nature of the site and because the proposed store is not visible from the Library. Those in opposition to the development have the opportunity to challenge the evidence and provide evidence to the contrary which is consistent with the Court of Appeal findings in *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295. Council wants Cannabis Retail Sales Uses to be located in large shopping centre sites such as this one.
- c) Mr. Clough clarified that the shopping centre is comprised of three legal lots and it is all zoned TC-C, the only site in the City with this type of zoning. A Cannabis Retail Sales Use could not be located anywhere on the site without requiring a variance to the minimum required separation distance from a Public Library.

*ii) Position of the Development Officer, S. Chow:*

- [37] It was clarified that the pink highlighted area on the separation distance map identifies the titled lot. The L-shaped portion is one titled lot and includes the location of the Public Library.
- [38] Section 70(6) of the *Bylaw* addresses visibility and Crime Prevention Through Environmental Design requirements. The Alberta Gaming Liquor and Cannabis Commission has clarified that Health Canada does not want product to be visible from the street but this can be achieved through the use of different design techniques.
- [39] Mr. Chow provided the following information in response to questions from the Board:
- a) Site is defined as one or more abutting lots that are not separated by a public roadway. He could not confirm if there is another location on this site that would allow the development of a Cannabis Retail Sales Use without requiring a variance.
  - b) He has not been provided with any information that the City may have collected regarding the potential harm of Cannabis Retail Sales Uses in close proximity to sensitive uses.
  - c) He did not have any opinion regarding the evidence provided by the Appellant that there is no harm because of the other site factors.
  - d) He could not confirm if there was a public roadway in the middle of the site. The distance from site-to-site is zero metres.

- e) The site-to-site regulation is a general measurement tool that is used by the City for everything with the exception of a store-to-store measurement that is used for cannabis and liquor stores when measurements are taken from wall-to-wall.

iii) *Position of an affected party in opposition of the Appellant, G. Monai, representing the Edmonton Public Library:*

- [40] The Edmonton Public Library does not support the proposed development because it does not comply with the minimum setback of 200 metres from the development site boundary requirement for a Public Library as set out in section 70.2 of the *Bylaw*.
- [41] Council undertook extensive public and stakeholder consultation while developing the regulations. Public feedback was clearly in favour of establishing a minimum 200-metre setback to help keep cannabis out of the hands of children and protect public health.
- [42] This establishes a test for harm that the Board should consider. In addition, the City has undertaken a review of other municipalities that have setbacks of between 30 metres and 300 metres from the site boundary where a Library is located to the site boundary of a retail cannabis store which is not unreasonable. After extensive stakeholder feedback and review, the 200-metre setback was established by Council.
- [43] In this case, the Applicant is requesting no setback which is contrary to the intent of the *Bylaw*.
- [44] The *Gaming, Liquor and Cannabis Act* provides clear direction on the importance of establishing a buffer between cannabis retailers, schools and provincial health care facilities and has provided municipalities with authority to set buffers with the same intent to help keep cannabis out of the hands of children and protect public health.
- [45] The Province established four policies in the establishment of legislation, including keeping cannabis out of the hands of children and youth; protecting public health; promoting safety on roads, in workplaces and in public spaces; and limiting the illegal market for cannabis.
- [46] The Province has undertaken extensive stakeholder consultation regarding cannabis and Albertans support the establishment of buffers to help keep cannabis out of the hands of youth. This establishes a benchmark for harm.
- [47] The Library opened in Heritage Valley Town Centre in April 2018 and serves customers who reside south of Anthony Henday Drive. The 3,200 square foot location provides services similar to established smaller libraries of 10,000 square feet in size.
- [48] This location has been very busy since it opened. It is highly visited by families and youth who participate in programs and services throughout the day and evening from



- Monday to Sunday. This year from January to September there were 108,127 customer visits.
- [49] The Library has offered 318 programs designed for children and youth this year with an average of 28 attendees. There are six schools located in close proximity to the Library and visit as a way to encourage students to become aware of the Library.
- [50] The programming that has been designed to serve primarily children and youth based on the demographics of the community was reviewed.
- [51] As a highly visited location for children and families who visit not only the Library but other businesses, they will have clear sight lines of the proposed Cannabis Retail Sales store. This is not compatible with the programming of the Edmonton Public Library which is targeted at youth.
- [52] The proposed location is not consistent with the direction provided by the Alberta Cannabis Framework and Legislation or the *Bylaw* which is based on extensive stakeholder feedback that was used to establish the minimum separation distance requirements. The goal was to establish reasonable minimum setbacks that would provide a “buffer in helping to keep cannabis out of the hands of children and protect public health”.
- [53] The onus should be on the Applicant to demonstrate what compelling reason and unique circumstances should be considered by the Board to vary the minimum required separation distance requirement. This requires clear and demonstrated evidence that the public consultation undertaken by the City and the Province should not apply.
- [54] While the Board has the authority to vary the regulation pursuant to section 687 of the *Municipal Government Act*, reasons for that decision must be provided. The Board must determine that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [55] In this case, the Edmonton Public Library believes that the Board must place the onus on the Applicant to demonstrate that the required variance will not result in any harm. The standard of harm has already been established through the public consultation conducted by both the City and the Province.
- [56] The *Bylaw* includes requirements that attempt to provide an equitable balance to locate cannabis retail stores in communities while balancing the sensitivity of creating buffers to minimize the exposure of cannabis to children and youth.
- [57] It is the responsibility of the Board to interpret the planning policies established by Council so as to relieve against hardship or strict interpretation of set standards that is creating hardship or leading to an unreasonable outcome. The decision of the Board should not be to reframe public policy so as to defeat the intention of Council in

establishing planning policy or to contradict the Alberta Cannabis Framework and Legislation.

- [58] Therefore, if it is presumed that varying the requested separation distance will result in negative impacts on the amenities of the neighborhood and the use, enjoyment and value of neighbouring properties, the onus is on the Applicant to demonstrate otherwise. If the Applicant cannot demonstrate that the proposed development will not cause harm, then the Board must apply the requirements of the *Bylaw*.
- [59] The Board has relied on *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 in the past. Based on this decision, the Board shifted the onus of proof from the Applicant to those in opposition to the development. This test requires that in order to grant a variance the test in section 687 of the *Municipal Government Act* must be met.
- [60] Placing the onus on those impacted by the development is unreasonable and establishes a precedent that nullifies the land use policy established by Council. *Newcastle* should not be relied on in this appeal because it relates to the required separation distance between two Liquor Stores.
- [61] The proposed development requires a variance to the minimum required separation distance between a Public Library and a Cannabis Retail Use, two Uses which are not compatible.
- [62] The *Bylaw* regulations take precedence unless the Applicant can demonstrate compelling reasons and unique circumstances that the can be considered by the Board to vary the regulation and would override the importance of the establishment of buffers and setbacks in order to keep cannabis out of the hands of children and youth.
- [63] If the Board applies an incorrect test for a variance they assume the role of policy maker which is not the intent.
- [64] The Edmonton Public Library has challenged a previous decision of the Board to the Court of Appeal and permission to appeal was granted on October 28, 2019 to hear arguments that challenge the interpretation of *Newcastle*.
- [65] Mr. Monai provided the following information in response to questions from the Board:
- a) The Library was consulted during the establishment of the setback requirements but he did not recall receiving any notification when Cannabis Retail Sales was added as a Use in this Zone.
  - b) The presumption of harm is based on public consultation and stakeholder feedback and the subsequent legislation adopted by the Province and the City to protect youth.

- c) Liquor purchased from a Liquor Store cannot be consumed in public which is different than the impact of a Cannabis Retail Sales store because product can be purchased and smoked in public as long as you are 10 metres away from an entrance.
- d) It was his opinion that it is not fair to place the onus of demonstrating harm onto the Library. Information regarding the impact of other approved Cannabis Retail Sales stores located in close proximity to other Library locations could not be provided. However, there are impacts created by anti-social behavior near the Downtown Library and the Abbotsfield Library location.
- e) Council may have amended section 70 in order to provide more clarity.
- f) The legislation that was established to protect youth from cannabis needs to be used as a foundation. The Library is not opposed to Cannabis Retail Sales stores if they are developed in appropriate locations.
- g) The challenges experienced at the Downtown and Abbotsfield locations are the result of drug use and crime. There are vulnerable youth who come to the Abbotsfield Library and the Board's decision to approve a Cannabis Retail Sales store within the minimum required 200-metre separation distance to this location has been appealed to the Court of Appeal.
- h) The Engagement Survey contained the opinions of a variety of individuals and provided important feedback to Council regarding the establishment of development regulations for Cannabis Retail Sales and to determine what is reasonable.

iv) *Rebuttal of the Appellant*

- [66] The Development Officer did not provide any data or evidence with respect to harm associated with the proposed Cannabis Retail Sales Use.
- [67] The Edmonton Public Library focused their evidence on the opinions obtained through the Engagement Survey. However, the Board needs to make a decision based on the *Bylaw* and the *Municipal Government Act*.
- [68] The Provincial regulations do not include minimum separation distances from a Public Library. This separation distance was established by the City and other municipalities.
- [69] None of the neighbouring schools, residents or the Community League have filed any objections to the proposed development. The only objection received was from the Edmonton Public Library.
- [70] Council has included Cannabis Retail Sales as a Permitted Use on this site. It was noted that the Edmonton Public Library did not oppose the zoning change adopted by Council to allow Cannabis Retail sales at this location.

- [71] The onus is on those in opposition to provide evidence of harm.
- [72] *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 does deal with the minimum required separation distance between two Liquor Stores but the principles of this decision relate to the minimum required separation distances for any Use.
- [73] He and Mr. Clough attempted to meet with the Edmonton Public Library prior to the hearing to discuss the proposed development without success.
- [74] On a site that is greater than 2 hectares in size and zoned either CSC or DC2, if the Cannabis Retail Sales Use is first in, the Development Officer can grant the development permit.
- [75] It was noted that in response to a question by the Board, the representative of the Edmonton Public Library could not provide any information or evidence regarding harm that has resulted from varying the minimum required separation distance at other locations in Edmonton. It was his opinion that the issues occurring at the Downtown and Abbotsfield Libraries existed before the legalization of cannabis. The proposed development is located in a suburban shopping centre which is a much different situation.
- [76] This development permit was applied for after the most recent amendments were made to the *Bylaw*.
- [77] Mr. Clough referenced the separation distance map to clarify the composition of the site. It is comprised of three legal lots and they are all zoned TC-C. A Cannabis Retail Sales Use could not be located anywhere on the site without a variance because of the minimum required separation distance.
- [78] This location was specifically chosen for this development. As the landlord they want the Library and all of the other Uses on the subject site to be happy. On-site security is provided and can be used to address any concerns raised by the Library regarding the Cannabis Retail Sales Use.

## Decision

- [79] 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 shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:

- a. customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
  - b. the exterior of all stores shall have ample transparency from the street;
  - c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
  - d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.
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*).

ADVISEMENTS:

- 1) 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).
  - 2) Signs require separate Development Applications.
  - 3) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- [80] In granting the development, the following regulation of the *Edmonton Zoning Bylaw* is waived:

70(2) Any Site containing Cannabis Retail Sales shall not be located less than:

- a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales.

**Reasons for Decision**

- [81] The proposed development is to change the Use from a General Retail Use to a Cannabis Retail Sales Use. The subject Site is located in the (TC-C) Heritage Valley Town Centre

Commercial Zone. Pursuant to section 990.4(2)(d) of the *Bylaw*, Cannabis Retail Sales is a Permitted Use in this Zone.

[82] Section 687(3)(a.4) of the *Municipal Government Act* (the “*Act*”) directs that in determining an appeal, the Board 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. Based on the submissions made, the Board finds the proposed development complies with those regulations and this Board has met its obligation under section 687(3)(a.4).

[83] The Development Authority refused the Development Permit because the proposed Cannabis Retail Sales Use does not comply with section 70(2)(a) of the *Bylaw* which states:

70(2) Any Site containing Cannabis Retail Sales shall not be located less than:

- a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales.

[84] Section 70(3)(a) of the *Bylaw* sets out the method for measuring the distance between Cannabis Retail Sales and Public Libraries:

70(3) For the purposes of subsection 2:

- a. Separation distances 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.

[85] As the proposed Cannabis Retail Sales Use and the Public Library are located on the same Site, the separation distance between the two Uses is calculated as zero metres in accordance with section 70(3)(a) of the *Bylaw*. Therefore, a waiver of this regulation is required if the development is to be approved.

[86] The *Bylaw* does not permit the Development Officer to grant a variance to the prescribed distance between a Cannabis Retail Sales Use and a Public Library pursuant section 70(5). However, the Board has discretion to do so per section 687(3)(d) of the *Act*.

[87] The Board grants the 200-metre waiver and approves the proposed development for the following reasons:

- a) Both the proposed Cannabis Retail Sales Use and the Public Library are Permitted Uses on this very large Site of approximately 11 hectares.

- b) As the Public Library opened on the Site in April 2018 and Council amended the *Bylaw* to include Cannabis Retail Sales as a Permitted Use on this Site on September 5, 2018, the Board finds it reasonable to infer from that decision that Council intended that both Uses could exist on this Special Area Site zoned TC-C despite the separation distances required under section 70 of the *Bylaw*.
- c) With respect to the actual proximity of the proposed development to the Public Library, the Board is satisfied that the separation of the two Uses is sufficient given the two are 160 metres apart door-to-door with two roadways, buildings and a variety of retail stores and businesses in between. Based on the photographic evidence provided by the Appellant, the proposed development is not visible from either the interior or exterior of the Public Library because the sight lines are blocked by buildings located between the two locations and the entrances to each face opposite directions. Further, the Board accepts the Appellant's evidence that the design of the proposed development which obscures visibility into the store addresses concerns regarding exposing children to cannabis sales.
- d) The Board acknowledges the opposition of the Edmonton Public Library to the development on the basis that the separation distance requirements establish the standard for harm in helping to keep cannabis out of the hands of children and should be honoured.
- e) However, the Board is bound by direction provided by the Court of Appeal in the case of *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295. In that case, the Court of Appeal ruled that it is an error for the Board to assume, without evidence, that the Bylaw creates a presumption of harm to the public and that it cannot grant variances unless that presumption is rebutted by the applicant.
- f) The Board reviewed the Stakeholder Comments regarding separation distances provided in the materials submitted. The feedback from consultations and surveys conducted by both the Province and the City provided a range of perspectives on separation distances generally but did not specifically address separation distances from libraries. Further, the Board observes that the survey materials are a compilation of perceptions rather than evidence showing that a particular separation distance between cannabis retail locations and locations where children may gather is a critical factor in keeping cannabis out of the hands of children.
- g) The Board received no evidence suggesting that the proposed development at this location on this Site would interfere with neighbouring properties specifically or that this Permitted Use would interfere with the amenities of the area generally. While the representative of the Edmonton Public Library noted that both the Downtown and Abbottsfield Library locations face challenges some of which are related to drug use, he did not specifically relate those challenges to proximity to existing Cannabis Retail Sales locations.

[88] For the above reasons, the Board is satisfied that its test under section 687(3(d) of the *Act* has been met and it is an appropriate circumstance to grant a variance to the minimum required separation distance.

A handwritten signature in blue ink, appearing to read "Gwen Harris". The signature is fluid and cursive, with the first name "Gwen" being more prominent than the last name "Harris".

Gwen Harris, Presiding Officer  
Subdivision and Development Appeal Board



**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.*