



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
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SDAB-D-17-222

Application 262563355-001

An appeal by K. Westby to Operate a Major Home Based Business (Participant recreation services - DUONG MYTIEN) was WITHDRAWN.



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Date: December 1, 2017
Project Number: 260786370-001
File Number: SDAB-D-17-223

Notice of Decision

- [1] On November 16, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 11, 2017. The appeal concerned the decision of the Development Authority, issued on September 26, 2017, to refuse the following development:

Change the Use from General Retail Stores to Minor Alcohol Sales and to construct interior alterations. (CRAFT BEERS ON JASPER)

- [2] The subject property is on Plan NB Blk 3 Lot 156, located at 10336 - Jasper Avenue NW, within the HA Heritage Area Zone. The Special Area Downtown Overlay and the Capital City Downtown Area Redevelopment Plan apply to the subject property.

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

- Copies of the refused permit, permit application with attachments;
- Canada Post receipt confirming delivery of the decision on September 28, 2017;
- Development Officer’s written submissions dated October 17, 2017;
- Map of Alcohol Sales locations;
- Correspondence from Heritage Planner;
- Copy of previous decision of the Board, File SDAB-D-17-051; and
- Supporting Materials of the Appellant, received on the date of the hearing.

Preliminary Matters

- [4] 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.
- [5] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

- [6] The Presiding Officer thanked the Development Officer for attending the hearing at the Board's request. In light of the circumstances, the typical order of appearance would be reversed, with the Development Officer speaking first. No opposition was noted.

Summary of Hearing

i) Position of the Development Officer, Mr. P. Belzile

- [8] Mr. Belzile attended the hearing to respond to questions from the Board.
- [9] Mr. Belzile confirmed that all of the five existing Alcohol Sales within 500 metres of the subject Site are classified as either Major or Minor Alcohol Sales. Mr. Belzile referred the Board to the detail on the map, which clarifies that the proposed development is 17 metres away from the closest Alcohol Sales and 57 metres away from the nearest park. He confirmed that an error had been made on Item 1, page 2 of the refused Application for Major Development Permit. Devine Wine and Spirits, located at 10111 – 104 Street NW, is 17 metres away from the proposed development, not 57 metres as shown. There is a park zoned AP at 10124 – 104 Street NW that is 57 metres from the proposed Minor Alcohol Sales location, which resulted in the confusion.
- [10] The Development Officer does not have the authority to vary the required 500 metres separation distance between Major or Minor Alcohol Sales (section 85(1)) or the required 100 metre separation distance from a Major or Minor Alcohol Sales Use to a park (section 85(4)) unless there are special circumstances as per sections 85 (7) to (9). These clauses provide authority to grant variances only on a temporary basis.
- [11] He could not provide information as to why the Major / Minor Alcohol Sales shown on his map were permitted to be in such close proximity to one another. Some of the developments may have been existing prior to the enactment of the 500 metre separation distance regulation, and others may have been approved by this Board.
- [12] There has been a recent bylaw change regarding distances between Major / Minor Alcohol Sales in the suburban areas but he is not sure if any changes are forthcoming in the downtown area.
- [13] He would have considered approving the proposed development if he had the discretion to do so, and his personal opinion is that allowing the proposed development would create no social harm.

ii) Position of the Appellant, Ms. J. Skeffington

- [14] Ms. Skeffington was accompanied by Mr. A. Oshry, one of the owners of the property and the proposed development. Ms. Skeffington has been in communication with Mr. Belzile and is aware of why the permit was refused.

[15] She provided comparisons of the number of dwellings located in the following neighbourhoods:

(a) Oliver:	14,153
(b) Downtown:	10,236
(c) Ottewell:	2,803
(d) Calder:	2,063

As shown, the Downtown area is the second most densely populated in the City, second only to Oliver which is immediately adjacent. The Downtown area has four to five times the population density than the more outlying areas of the City and the demographics are more adult oriented rather than family oriented. Many people work downtown so there is a higher concentration of people in the neighbourhood all day long. A myriad of ETS bus stops and bus routes serve this area.

[16] It is hard to apply the same standards of a liquor store in this area to a liquor store in Calder or Ottewell. A downtown location serves 20,000 residents plus a work force. Workers will often stop to pick up something on their way home to avoid an unnecessary additional trip. Applying the 500 metre separation distance to downtown liquor stores does not make sense.

[17] The City has been advocating for a more pedestrian-oriented versus vehicle-oriented lifestyle. A higher concentration of pedestrians brings the streets to life, increases security and provides a healthier lifestyle. Visibility and increased traffic and lighting, which this development will bring, will be the largest deterrent to crime and will prevent unwanted people from loitering.

[18] This particular location has been vacant for a year and the adjoining space is now also vacant. Over the years it has been leased or rented to lower value tenants of a more temporary nature such as a used CD and used book store. Mr. Oshry has recently had inquiries from prospective tenants who wish to run a cannabis operation. He would prefer not to accept such tenants as they do not have an investment in the area and do not contribute to a pedestrian-oriented streetscape.

[19] No additional vehicle traffic will be generated. There is already a large amount of pedestrian traffic in this area and it is well served by Edmonton Transit. In support, she referenced the Sobeys that was previously located on Jasper Avenue and 104 Street and how it was always packed at lunch time and in the evening.

[20] There are two other alcohol sales in the immediate area. One is Divine Wines and the other was supported by this Board on March 9 of this year (SDAB-D-17-051) which is located in the basement of a building and does not contribute to the streetscape.

[21] The subject building is on the historic inventory list but not currently on the registry. The owners have recently spent \$450,000 in improving the building facade to return it to its original appearance. No City funding was received for this upgrade. They wish to operate

a sustainable business while at the same time improving the street. They plan to provide additional lighting to make the area safe, secure and more friendly and enjoyable.

- [22] Craft Beers on Jasper will sell a slightly higher level of product than a general liquor store and they are planning on targeting the growing number of young professionals who are moving into this area. The exact business model and business hours have not yet been finalized but they will likely be offering tastings. While the business will be centered around craft beer they will also sell wine and other types of alcohol. This is similar to the Divine Wines store nearby which is focused on wine but also sells other products.
- [23] Ms. Skeffington does not believe the proximity to parks is an issue. The park at 10124 – 104 Street (Michael Phair Park) is a very narrow strip, is not a children’s park and is not used very often. Beaver Hills House Park, which is a little further away, was redesigned to eliminate the hills, making it easier for the police to monitor. It can be quite busy at lunch time.
- [24] She has been in constant communication with the Heritage Planner but has received no comments from the Downtown Business Association. No one has expressed any opposition to the proposed development.
- [25] They have reviewed the recommended conditions of the Development Officer should the Board support this appeal and have no objections to any of them.

Decision

- [26] 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 ground floor level portion of the facade abutting Jasper Avenue shall be comprised of transparent, non-reflective, non-tinted, non-obscured glazing. (Reference Section 910.4(8)(a))
 2. The exterior of the store shall have ample transparency from the street to allow natural surveillance. (Reference Section 85(12)(a))
 3. Exterior lighting should be in accordance with the minimum safety standards prescribed by the Illuminating Engineers Society of North America. (Reference Section 85(12)(b))
 4. There shall be no customer parking located behind the building. (Reference Section 85(12)(c))
 5. Customer access to the store is limited to a storefront that is visible from the street. (Reference Section 85(12)(e))

6. 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)

ADVISEMENTS

1. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
2. Signs require separate Development Applications.
3. 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 (780-442-5311) for further information.
4. The subject building [Looby Block] is on the Inventory of Historic Resources. For more information, please contact a Heritage Planner at 790-496-6123 or 780-496-5281. Additional information can also be found at: https://www.edmonton.ca/city_government/edmonton_archives/historic-resources.aspx
5. 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 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.
6. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)
7. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

[27] In granting the development the following sections of the Zoning Bylaw are waived:

- a) Section 85(1) - Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.

- b) Section 85(4) – Any Site containing a Major Alcohol Sales or Minor Alcohol Sales 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 Major Alcohol or Minor Alcohol Sales.

Reasons for Decision

[28] Minor Alcohol Sales is a Permitted Use in the HA Heritage Area Zone.

[29] The Board has made the decision to waive Section 85(1) and Section 85(4) of the Edmonton Zoning Bylaw for the following reasons:

- a) The Board notes, through the presentation of the Development Authority, that there are already five additional alcohol sales within 500 metres of this proposed location. Given this fact the Board analyzed what incremental difference that adding this specific location would have and found it was presented with no information that it would have any negative impact.
- b) The Board considered the Alberta Court of Appeal decision, *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295, which dealt with Alcohol Sales separation distances in another location, and it is clear that the Board must apply its test under section 687(3)(d) of the *Municipal Government Act* to determine whether to grant variances or to waive Zoning Bylaw regulations. The actual number of other establishments in the area, or the actual separation distance itself, is not determinative.
- c) The Board accepts the submissions of the Applicant that the downtown corridor and Jasper Avenue are different from other areas of the city. There is a higher population density base and the demographics are more suited to this type of application. The Board further notes that this area is part of the Capital City Downtown Plan which focuses on pedestrian based uses and the Board finds that given its location within a neighbourhood with higher population density, the proposed development does meet this criteria.
- d) Regarding the required 100 metre separation distance between Alcohol Sales and parks, the Board notes there is already an existing Alcohol Sales Use, Devine Wine and Spirits located at 10111 – 104 Street NW, within 100 metres which is located closer to the park than the subject application. The Board accepts the presentations of the Applicant that the park is well monitored and that the proposed development increase pedestrian traffic to the area, helping to mitigate associated crime issues.

[30] The Board also notes that the Downtown area is in transition and believes that the subject development will contribute to the vibrancy of the Downtown area and Jasper Avenue

itself. The Board accepts that the density and the demographics of this location do lend themselves to more of these Uses, and that application of the 500 metre separation distance may not be suitable for all areas of the city, including the Downtown area.

- [31] The Board notes that the Development Officer indicated that he could only grant variances with respect to separation distance if the proposed development is approved on a temporary basis pursuant to sections 85(7) to (9) of the Zoning Bylaw. Had he had an opportunity to be able to consider a variance or waiving the regulations, he would have considered it.
- [32] Pursuant to section 687(3)(d) of the *Municipal Government Act*, 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.

Vincent Laberge, 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.



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Date: December 1, 2017
Project Number: 244029905-001
File Number: SDAB-D-17-224

Notice of Decision

- [1] On November 16, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 12, 2017. The appeal concerned the decision of the Development Authority, issued on September 27, 2017, to refuse the following development:

Construct a Convenience Retail Store (24/7 Seven Eleven Store) and to demolish an existing Convenience Retail Store building

- [2] The subject property is on Plan 1198KS Blk 29 Lot 2U, located at 6545 - 99 Street NW and Plan 1198KS Blk 29 Lot 1, located at 6545 - 99 Street NW and Plan 1198KS Blk 29 Lot 2, located at 6545 - 99 Street NW, within the CNC Neighbourhood Convenience Commercial Zone. The CNC Neighbourhood Convenience Commercial Zone applies to the subject property.

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

- Copies of the refused permit, permit application with attachments;
- Canada Post receipt confirming delivery of the decision on September 29, 2017;
- Copy of the refused drawings and revised landscaping plan;
- Development Officer’s written submissions dated November 6, 2017;
- Correspondence from Fire Rescue Services;
- Appellant’s supporting materials;
- One online response; and
- Correspondence from the Hazeldean Community League expressing neither support nor opposition to the development.

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

- Exhibit “A” – Three diagrams showing the configuration of 99 Street after the 1957 Replotting which created the Hazeldean neighbourhood.

- Exhibit “B” – Page 3 of the Utility Right of Way Document registered at Land Titles

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, EFG Architects

- [8] The Appellant was represented by legal counsel, Mr. J. Murphy.
- [9] The subject property is located on a very unusual site that consists of three lots (Lot 1, Lot 2, and Lot 2U) which are the result of a replot done in 1955 when the Hazeldean neighbourhood was created. At that time, the existing site was created consisting of Lots 1 and 2, plus a public utility lot and a portion of 99 Street. All three lots have the same owner.
- [10] Exhibit “A” was presented to show how 99 Street has an unusual configuration between 63 and 66 Avenues. This street is indented towards the east between the subject property and the commercial development located at 99 Street and 63 Avenue, and the indented portion is treed. 99 Street readjusts at the subject site and this is the first lot that protrudes out onto the street. There is one commercial establishment north of the subject site (Plaza 99) where the building is set back quite far from the street, with a parking lot fronting onto 99 Street. All the properties north of Plaza 99 come right out to the property line.
- [11] Mr. Murphy then reviewed his supporting materials with the Board.
- [12] He reviewed the reasons for refusal of the Development Permit located under Tab1:
- i) There is a deficiency of 4.5 metres in the required Setback from 99 Street. The Appellants are asking this requirement be waived as they would like to build to the property line.
 - ii) The Development Officer concurred with the recommendation of the Edmonton Design Committee that this development be refused. In their view, the development is an overdevelopment of the site and there are deficiencies in the required landscaping.

- iii) The refused permit states that no landscaping is provided in the yard along 99th Street; however, this yard does not exist as the building will be located at this location. There is sufficient landscaping on the remainder of the site.
- iv) There is a deficiency of one loading stall. A double stall has been included on the revised plans; therefore, this deficiency no longer exists.
- v) The proposed loading space is blocking the doors of an existing building. The loading space referred to has been re-located and this is no longer an issue.

[13] Tab 2 provides a feel for the existing site and the proposed development:

- i) The first page shows a rendering of the proposed development. Because Southland Corporation felt this was an ideal site, they have agreed to amend their standard floor plan to allow this 7-Eleven store to be a few feet narrower than usual.
- ii) Drawing A1 highlights Lot 2U in yellow. There is a restrictive covenant in place which limits what is permitted on this lot to parking, surface features, concrete curbing, plant stands, etc. No building structure can be built on it. This drawing also shows the location of the building that will remain and has been leased by an appliance outlet for many years. The existing Atco style building at the bottom left of the drawing was part of the previous gas bar and will be demolished.
- iii) Photos show the subject site from various angles and a historic overhead photo depicts the site when the gas bar was still present. This overhead view shows how the building to the north (Plaza 99) has a large parking lot abutting 99 Street which is exactly what the City is trying to avoid as it is not pedestrian-oriented.

[14] Tab 3 contains a memo and marked up drawings from the City Transportation Department outlining the concerns associated with the proposed development. In response, the Appellant has agreed to:

- i) Remove the existing access on the north end of the site,
- ii) Re-design the access to 99 Street,
- iii) Put a cross-lot access agreement in place agreeing to provide access to 66 Avenue and 99 Street from Lot 2U,
- iv) Enter into a service agreement with the City,
- v) Relocate a tree which was blocking visibility on the corner of 99 Street and 65 Avenue,
- vi) Ensure that loading activities will not encroach onto the City sidewalk along 98 Street and will be contained within private property,

- vii) Relocate the loading area to avoid blocking the existing overhead doors of the appliance store.
- [15] The Appellants agree with all the suggested conditions listed by the Development Officer should this development be approved.
- [16] Tab 4 contains the final revised site plan A1 (dated November 16, 2017) and the final revised landscaping plan L1 (dated November 15, 2017). All of the requirements set out by Transportation have been met in these revisions.
- [17] The Appellant expressed confusion as to why they were advised by the Development Officer that a registered landscape architect must be hired. There are only two zones that have this requirement according to the Edmonton Zoning Bylaw: The Arena and Entertainment District Zone, and the Heritage Valley Town Centre Commercial Zone. Their landscaper is well qualified and has a Bachelor of Science degree in Horticulture.
- [18] Tab 5 contains the minutes of the Edmonton Design Committee dated June 20, 2017, where the following motion of non-support for the development was made and passed:
- *In its current configuration the site is overdeveloped. The required setbacks have not been provided, and the minimum landscape requirement has not been met.*
- i) Mr. Murphy submitted that this decision cannot be relied on as it is inaccurate. The site is not overdeveloped as they are only at 41 percent of the permitted Floor Area Ratio for the CNC Neighbourhood Convenience Commercial Zone and the site coverage is only 40 percent of that permitted. They have designed an articulated building to minimize any massing.
- ii) The Edmonton Design Committee has made no recognition of the difficulties associated with the site and has not taken into account that all of the developments in the immediate vicinity along 99 Street have zero lot lines. He submits that the subject design is pedestrian friendly and hides the parking behind the buildings.
- iii) While the Development Officer must consider the opinion of the Edmonton Design Committee, this opinion is not binding on this Board and should not be considered in this case. He does not believe it was a requirement of the bylaw that the Development Officer consult with the Edmonton Design Committee for this site.
- [19] Tab 6 shows the various zones adjacent to the subject site. The utility easement on the subject site, which is zoned CNC Neighbourhood Convenience Commercial Zone, is highlighted in pink. Another CNC Neighbourhood Convenience Commercial Zone at the corner of 99 Street and 63 Avenue has a cannabis store, a tattoo shop, a Latin food outlet and grocery store and the Brick Mattress Centre. The area is in need of a convenience store such as the proposed 7-Eleven store.

- [20] Tab 7 contains two overhead photos of the area along 99 Street between 63 Avenue to a few blocks north of the subject site. These photos show the row of trees and greenery which is actually a portion of 99 Street and the garages of residential properties to the east of the treed portion which come right out to the property line. The photos also show the prevalence of parking lots coming to the street and the properties coming right to the lot line north of Plaza 99.
- [21] Tab 8 depicts the east side of 99 Street from the north boundary of Plaza 99 to just south of 70 Avenue. All of these properties along 99 Street are fenced right to the property line. Plaza 99 is the only development in a five block area that is not at zero lot line.
- [22] Tab 9 is a series of photos depicting the businesses to the west and the parking that comes right out to the street. Although these businesses may have to provide a three metre setback when they are re-developed, it is unlikely that redevelopment will occur soon. The pole in the final picture is on the subject site and is part of the sign that will be removed when their development proceeds.
- [23] This site has a hardship because of the utility lot right down the middle of their site, which cannot have a building on it. Their goal is to improve the site and produce revenue without negatively impacting neighbours.
- [24] The proposed development is a permitted use on this site. The only variance required is to the Setback along 99 Street. The Development Officer has concluded that a variance to the setback negatively impacts the urban form along this portion of 99 Street. The urban form is a zero lot line walking area that the proposed development conforms with. They are adding an amenity to the neighbourhood, which hopefully will spark further development.
- [25] There is an existing loading area at the back of the appliance store which is non-conforming. The delivery vans that use the overhead doors at this loading area back into the building so that they are not parked across the City sidewalk.
- [26] The subject site is pedestrian friendly and there will be two entrances / exits to the building. People coming from the neighbourhood will be able to access the store from the entrance that is located at the 45 degree angle created where 99 Street and 66 Avenue meet. The building is articulated and there will be plantings in these spaces. They intend to landscape along the boulevard and are aware that this will involve entering into a servicing agreement with the City.

iv) Position of the Development Officer, Ms. C. Li

- [27] There was a discrepancy between the drawings submitted which show a 0.6 metre setback and the variance request letter which asks that the setback be reduced to 0.0 metre. As per Section 13.1.1.5 of the Edmonton Zoning Bylaw “In the event of a discrepancy between any written description and the drawings, the written description shall prevail”.

- [28] The proposed loading space is on Lot 2, not within Lot 1 where the proposed building is located. This could be an issue if the lots were ever sold separately. The City Transportation Department requires a cross access agreement to be put in place for Lots 1 and 2. Also, the size of the proposed loading space is deficient and each loading space should be 3 metres in width by 9 metres in length. The proposed double loading space is 18 feet (5.49 metres) by 29 feet (8.84 metres).
- [29] The existing loading area along 98 Street is not long enough for loading and unloading vehicles longer than 6 metres as this would create a pedestrian hazard. Ms. Li is not able to consider the area inside the building as part of the loading space.
- [30] She stated that she has a Master's degree in landscape architecture, and in her opinion the proposed deciduous trees on top of a sewer easement are not suitable as they can develop a very large root system. She has not seen any written permission from the City allowing this type of planting as per the Utility Right of Way Document registered at Land Titles (Exhibit "B"). This document states that an Owner must obtain written consent of the City prior to planting or re-paving on this utility lot and Ms. Li is not able to over-ride such a requirement. The existing convenience store was built in 1997 and this utility lot was already registered on title at that time.
- [31] The existing store has a 3 metre setback from 99 Street and she feels that any future development should also provide a setback.
- [32] Ms. Li confirmed that she was required to refer the proposed development to the Edmonton Design Committee for review as per Schedule A and Attachment I to Schedule A of the *Edmonton Design Committee Bylaw* (Bylaw 4054). She must consider the opinion of the Edmonton Design Committee as a recommendation but it is not mandatory that she accept their recommendation. She concurs with the Edmonton Design Committee that the site is overdeveloped although she does agree that there is a hardship associated with this site.

vi) Rebuttal of the Appellant

- [33] Mr. Murphy acknowledged that the loading space on the east side of the existing building does not meet the 2017 loading zone requirements; however, since it has been there for many years and the existing building is not being altered the loading space can remain. The delivery vans are able to pull into the building for loading / unloading. They are not permitted to park across the sidewalk and any violation of this can be enforced.
- [34] They are aware of the restrictive covenant in place and the requirement to get written permission from the owner prior to proceeding with any development. No decision that the Board makes has any impact on existing registrations on the title. They would be in agreement with a condition of approval that states that the number, location and type of planting is acceptable to the Development Authority.

- [35] They have already stated that they will be obtaining a cross access agreement. The City has asked that this be a condition of approval and they have no issues with this.
- [36] The reason there is a discrepancy in the setback from 0 metres to 0.6 metres is because the building is articulated. They are asking that the setback requirement be waived to allow them to build a zero lot line building.
- [37] Mr. Murphy conceded that while a double loading zone has been proposed there is a slight deficiency in the required width and length and requested the Board grant this variance.

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**:

Drainage Conditions:

- 1) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$421.36.

SSTC is applicable to the entire property of 0.0538 ha at the rate of \$7,832/ha. The area is obtained from the City's information computer program called POSSE. The above SSTC charge is quoted at year 2017 rate. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor cashiers, Edmonton Service Centre, 10111 - 104 Avenue NW.

Drainage Advisements:

- 1) The above assessment is made based on information currently available to our Department. Should such information changes in the future, a new assessment will have to be made.
- 2) In addition to the above items, if required, the applicant/owner shall pay for the installation cost of sewer services to property line. For details, please send inquiries to wass.drainage@edmonton.ca

More information about PAC, EA, and SSTC assessments can be found on the City of Edmonton's website: www.edmonton.ca

Subdivision Planning (Transportation) Conditions:

- 1) The existing 10 m wide access to 99 Street located approximately 2.3 m from the northwest property line, must be removed and filled in with the curb, gutter and

- sidewalk constructed as per City of Edmonton Design and Construction Standards and the boulevard restored to grass, as shown on Enclosure I.
- 2) The existing 9 m wide access to 99 Street located approximately 3.5 m from the south property line, must be removed and filled in with the curb, gutter and sidewalk constructed as per City of Edmonton Design and Construction Standards and the boulevard restored to grass, as shown on Enclosure I.
 - 3) The proposed 7.5 m access to 99 Street located approximately 5.8 m from the south property line as shown on Enclosure II, is acceptable to Subdivision Planning and must be constructed as a commercial crossing access to City of Edmonton Standards.
 - 4) The owner/applicant must enter into a Servicing Agreement for the proposed trees and landscaping within the 66 Avenue road right-of-way, as shown on Enclosure II.
 - 5) The owner must enter into a Servicing Agreement with the City for the following improvements:
 - a. removal of the existing 10 m access to 99 Street located approximately 2.3 m from the northwest property line and construction of the curb, gutter and sidewalk as per City of Edmonton Design and Construction Standards and the boulevard restored to grass;
 - b. removal of the existing 9 m access to 99 Street located approximately 3.5 m from the south property line and construction of the curb, gutter and sidewalk as per City of Edmonton Design and Construction Standards and the boulevard restored to grass;
 - c. construction of the proposed 7 m commercial crossing access to 99 Street located approximately 5.8 m from the south property line as per City of Edmonton Design and Construction Standards;
 - d. planting of the proposed trees and landscaping within 66 Avenue City road right-of-way;

This Servicing Agreement is a requirement of this Development Application. The Servicing Agreement, which includes an Engineering Drawing review and approval process, must be signed **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**. The applicant must contact Susana Maki of Development Servicing Agreements (780-423-6889) to initiate the agreement.

6. The proposed tree planting with the 66 Avenue and 99 Street corner-cut, as shown on Enclosure II, is not acceptable to Subdivision Planning and must be removed from the site plan. Tree planting within corner-cuts is prohibited as it obstructs sight lines and creates a safety hazard.

- 7) The existing loading stalls with access to 98A Street, as shown on Enclosure I, are not long enough to facilitate larger delivery vehicles within private property. Any loading vehicle encroachment onto the existing City sidewalk on the west side of 98A Street creates a safety hazard for pedestrians. Any vehicles longer than 6 m must use alternate loading stalls. All loading and unloading must take place entirely within private property or on-street with a designated loading zone.
- 8) An easement must be registered on the Certificates of Title for Lots 1, 2 and 2U to facilitate cross-lot access to 99 Street and 66 Avenue from Lot 2U, as shown on Enclosure I. The City of Edmonton will be a party to this easement, and the easement must stipulate that the owners may not discharge the easement without the express written consent of the City of Edmonton. The City's Law Branch will prepare the easement documents and the owner may contact Matthew Bennett of the Law Branch (matthew.bennett2@edmonton.ca) for further information. The documents will be sent directly to the owner for review and signature. The owner must return the signed easements to the City of Edmonton Law Branch for execution. The executed easement will be returned to the owner who is required to register the easement on all affected Certificates of Title prior to the release of the drawings for the Building Permit.
- 9) This development is proposed to be constructed up to the property line. The owner/applicant must enter into an Encroachment Agreement with the City for any pilings, shoring and tie-backs to remain within road right-of-way. The owner/applicant must email sdencroachmentagreements@edmonton.ca for information on the agreement. The applicant is responsible to provide Development and Zoning Services with a plan identifying all existing utilities on road right-of-way within the affected area of the encroachment.
- 10) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
- 11) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required; and
 - confirmation if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx

- 12) Any alley, sidewalk, or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Transportation Advisements:

- 1) Access from the site to 66 Avenue and 98A Street exists, as shown on the Enclosure. Any modification to the existing accesses requires the review and approval of Subdivision Planning.
- 2) Any further change of use or development on the subject parcel will require a parking justification report to confirm the parking scenario.

Landscape Conditions:

- 1) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Development Permit Inspection Fee of \$500.00 (This can be paid by phone with a credit card - 780-442-5054)
- 2) Landscaping shall be in accordance with the approved landscaping plan, Section 55 of the Zoning Bylaw and to the satisfaction of the Development Officer.
- 3) Landscaping shall be in accordance with the approved landscaping plan and Section 55 of the Zoning Bylaw, and the number, location and types of plants must be to the satisfaction of the Development Officer.
- 4) Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.
- 5) Landscaping shall be maintained in a healthy condition for a minimum of 24 months after the landscaping has been installed, to the satisfaction of the Development Officer.
- 6) A Guaranteed Landscaping Security shall be provided to the City of Edmonton at the time of Development Permit Inspection, to the satisfaction of the Development Officer.

Notes:

- 1) 20% of the approved Guaranteed Landscape Security shall be collected on compliant Landscape Plans, after the first Development Permit Inspection, for a period of 24 months from the date of first Development Permit Inspection.
- 2) Upon the first Development Permit Inspection and determination that landscape construction has been completed in compliance with the approved Landscape Plan, 20% of the approved Guaranteed Landscape Security shall be collected and retained for a period of 24 months from the date of first Development Permit Inspection.
- 3) Sites that are not completed or are not compliant with approved Landscape Plans at the first Development Permit Inspection, shall be required to submit a Security for incomplete work, up to and including the full value of the approved Guaranteed Landscape Security value.

Development Conditions:

- 1) No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard and loading, storage, parking and trash collection areas shall be screened from view from any adjacent site and public roadway in accordance with Section 55 of the Zoning Bylaw.
- 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) 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))
- 4) Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference Section 54.1(3))
- 5) Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
- 6) All access locations and curb crossings shall require the approval of Transportation Services. (Reference Section 53(1))

Development Advisement:

- 1) The applicant and property Owner is advised that Plan 1198 KS, Block 29, Lot 2U is Utility Right-of-Way (URW). The Owner shall not, without the prior written consent for the City, stockpile, excavate, drill, install, erect, construct or place above, on or under the Right-of-Way, any pavement, building, fence, pit, sidewalk, or other structure or improvement. The Owner shall not permit any of these activities to occur by others without the City's prior written consent.

Notes:

- 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) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
 - 3) Signs require separate Development Applications.
 - 4) 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.
 - 5) 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 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.
 - 6) 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.
- [39] In granting the development the following variances to the Zoning Bylaw are allowed:
1. Section 310.4(5) is varied to permit the minimum required Setback to be 0.0 metres instead of the required 4.50 metres.

2. Section 55.5(1)(e) is waived as the Board has allowed a variance to section 310.4(5) (see above). As there is a 0.0 metre Setback where the Site abuts the public roadway, no landscaping is required in this 0.0 metre Setback.
3. No variance is required to sections 54.2(2) and 54.4, Schedule 3 with respect to Loading Spaces, as the revised plans submitted at the hearing indicate that loading space requirements have been met.
4. The minimum required width of a loading space, pursuant to Section 54.4(3)(a) is varied to allow a deficiency of 0.26 metres per loading space, thereby decreasing the minimum allowed to 2.74 metres per loading space. The minimum required length of a loading space, pursuant to Section 54.4(3)(a) is varied to allow a deficiency of 0.16, thereby decreasing the minimum allowed to 8.84 metres.

Reasons for Decision

- [40] Convenience Retail Stores is a Permitted Use in the CNC Neighbourhood Convenience Commercial Zone.
- [41] This decision of the Board is based on the revised drawings, namely the revised site plan and the revised landscaping plan, presented in Tab 4 of the Appellant's submission.
- [42] The Board grants the variance to the Side Setback for the following reasons:
1. The Board accepts the presentations provided by the Appellant that the utility easement that intersects the property in the middle of the site constrains the opportunities and placements of development within Lot 2. In analyzing that there would be a 0.0 metre setback between the building and the property line the Board notes that it is a distance from the existing City sidewalk and landscaping will be provided within that space. When looking north, all of the property fences on the east side of 99 Street are built to the property line and create the boundary for pedestrian access which will appear visually similar.
 2. The Board finds that the design contemplated is set in a position to enhance the streetscape as the parking and loading areas are behind the structure to the east and therefore somewhat concealed from the pedestrian sidewalk.
 3. The building design has articulations and materials that will differentiate the look and feel of the structure, thus enhancing its visual appeal.
 4. The entry door is located on the 45 degree angle created by this parcel of land and therefore does not directly access the sidewalks on 99 Street.
- [43] In granting the variances for the loading zone spaces the board concludes that the variance to the size in width and length are minimal and will have no impact or effect on the operation within the site.

- [44] The Board, in analyzing the report provided by the Edmonton Design Committee, does not support the conclusions reached by that committee with respect to overdevelopment. It reaches this position through the presentations of the Appellant where it was shown and accepted that the Floor Area Ratio and site coverages are within the required regulations. Further to the conclusions by the Edmonton Design Committee the Board finds there was no analysis or back-up reference provided to have reached the conclusions that the setback variance and the landscaping variance would have a negative impact on this development.
- [45] The Board finds this to be an appropriate development that appears to be needed by this community and was presented with no evidence that it would have any negative impact on the neighbourhood. No one appeared in opposition, nor were any negative responses received pertaining to this development. The Board notes that the only online response was neutral and appeared to comment on the operations of the development and provided no further planning reasons for the Board to consider.
- [46] Pursuant to section 687(3)(d), 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.

Vincent Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. N. Somerville; Ms. N. Hack; Ms. G. Harris, Ms., M. McCallum

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.