

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: StyleLab Developments Inc v Development Authority of the City of Edmonton, 2019 ABESDAB 10202

Date: December 5, 2019
Project Number: 326683306-001
File Number: SDAB-D-19-202

Between:

StyleLab Developments Inc

and

The City of Edmonton, Development Authority

Board Members

Shari LaPerle, Presiding Officer
Vincent Laberge
Lyll Pratt
Laura Delfs

DECISION

- [1] On November 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 4, 2019 for an application by StyleLab Developments Inc. The appeal concerned the decision of the Development Authority, issued on October 28, 2019, to refuse the following development:

To construct a Single Detached House with Unenclosed Front Porch, balcony, Basement development (NOT to be used as an additional Dwelling) and fireplace, and to demolish an existing Single Detached House.

- [2] The subject property is on Plan 4587AK Blk 1 Lot 12, located at 7707 - 112S Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay; North Saskatchewan River Valley and Ravine System Protection Overlay and the Cromdale/Virginia Park Area Redevelopment Plan apply to the subject property.

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

- Copy of the refused Development Permit, proposed plans, and a response from Integrated Infrastructure Services;
- The Development Officer's written submission;
- The Appellant's written submissions and revised plans; and
- An Online response from an adjacent property in support of the proposed development.

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

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

Summary of Hearing

i) Position of the Development Officer, K. Payne

[7] Mr. Payne circulated the application as outlined in section 814 of the Mature Neighbourhood Overlay due to an excess in the allowable Height.

[8] The notice was sent out with a variance of 10.7 metres allowing time for feedback before issuing the decision.

[9] A Development Officer does not have the authority to vary Height as outlined in section 11 of the *Edmonton Zoning Bylaw*.

[10] The notice was sent out with the wrong calculation. The Height should have been 10.98 metres and not 10.7 metres. The initial Height calculation was based on using the average elevation at the corners of the site.

[11] Once he realized there was an error, he contacted the Appellant and asked if they could provide revised plans to lower the Height of the house to meet 10.7 metres.

[12] Mr. Payne confirmed that based on the revised plans, the Appellant was able to reduce the Height keeping the proposed development in line with the 10.7-metre variance that was circulated to the community.

ii) Position of the Appellant, T. Kalita, property owner of the subject Site

- [13] Mr. Kalita referred to his PowerPoint presentation that was submitted to the Board.
- [14] He and his partner have worked with their builder and neighbours for several months to develop plans for a single detached house that would meet their needs.
- [15] In their opinion, the excess in Height will not materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- [16] In the preliminary design, they identified early on that there would be an excess in Height due to the roof design and needing adequate clearance from the stairway landing and ceiling on the third floor.
- [17] They consulted with their neighbours to ensure they were comfortable with the proposed development before the development permit application was submitted.
- [18] During community consultation, they shared a full set of plans, and received support from neighbouring property owners, which included both of the abutting properties.
- [19] Once the Development Officer finalized the Height calculation and rendered a decision, they canvassed the neighbourhood and received support for the proposed development with an excess in Height of 1.24 metres from the average grade of the lot to the peak of the roof for total of 11.64 metres and 2.08 metres from the average grade of the lot to the midpoint of the roof for a total of 10.98 metres.
- [20] The Development Officer informed them that the consultation letter circulated by the City contained an error indicating that the proposed Height to the midpoint is 10.7 metres instead of 10.98 metres, while there was no error in the proposed roof peak Height.
- [21] The Development Officer asked if they would be willing to reduce the finished floor Height by 0.09 metres and use an alternative method to determine average grade to bring it within 10.7 metres to the midpoint.
- [22] They worked with the surveyor, designer, and builder and were able to reduce the Height to the midpoint in order to align with the consultation letter that was sent out, which is an overall reduction of 0.28 metres from what was petitioned to the neighbours.
- [23] In regard to the neighbourhood context, this part of Cromdale is experiencing a transition from single-storey bungalows to multi-storey homes. Over the years, a number of properties have been redeveloped on the blockface.
- [24] There are no neighbours to the north or south as it is green space, and the rear yards are south facing. The proposed development is located to the north of the subject site so sunlight will not be impacted.

- [25] They spent a significant amount of time taking the design of the house into consideration to mitigate any impacts on the neighbours by adding architectural articulation to the house through the inclusion of two gables in the roof design, adding varying materials to the façade to increase privacy, and containing the additional Height within the first 11.53 metres of the house.
- [26] By recessing the Height back from the front of the house; it will also mitigate any impact that might be seen from the sidewalk.
- [27] Mr. Kalita provided the following information in response to questions by the Board:
- a. The Development Officer made an error in the Height calculation but nothing else has changed in the revised plans.
 - b. When they consulted with neighbouring property owners they were using the Height variance based on the Development Officer's calculation.
 - c. They compiled a neighbourhood petition from the amended plans.
 - d. They are agreeable to the suggested conditions of the Development Officer.
 - e. The Development Officer circulated the proposed plans to the City Engineer who did not have any concerns.

Decision

- [28] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following **CONDITIONS**:
1. The proposed approved development shall be constructed in accordance with the Revised Stamped Plans.
 2. This Development Permit authorizes the development of a Single Detached House with Unenclosed Front Porch, balcony, Basement development (NOT to be used as an additional Dwelling) and fireplace, and to demolish an existing Single Detached House.
 3. **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.6).
 4. Landscaping shall be installed and maintained in accordance with Section 55.
 5. Frosted or translucent glass treatment shall be used on windows to minimize overlook into adjacent properties (Reference Section 814.3.8).
 6. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 m above the finished ground level, excluding any artificial embankment, shall

- provide Privacy Screening to prevent visual intrusion into Abutting properties. (Reference Section 814.3.9).
7. No swimming pool or comparable water retention structure should be constructed at the site, and permanent sprinkler or irrigation systems should also not be constructed or installed.
 8. Roof leaders, downspouts, and sump pump discharge spouts should be connected to the storm sewer system, where possible, or discharge must be directed away from the slopes.
 9. Any proposed re-grading of the site must be undertaken only in accordance with the recommendations of a qualified geotechnical consultant.
 10. Grading must not involve any attempt to direct or channel water toward the slopes.
 11. Water must also not be allowed to accumulate or pond on the property.
 12. In addition, the retention of existing vegetation during site development is considered highly desirable, and all vegetation on the ravine slopes must be maintained.
 13. The applicant shall be responsible to mitigate all geotechnical risks to surrounding properties and structures arising from the proposed development.
 14. It is strongly encouraged that the owner / resident and applicant to obtain a site-specific geotechnical engineering slope stability assessment and the guidance of a geotechnical engineer to better define and manage the risk to their property and development. The owner is encouraged to obtain the recommendations of a geotechnical engineer to better define and manage the risk to their property and development.

Advisements:

1. Lot grades must match the Edmonton Drainage Bylaw 18093 and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
2. Any proposed change from the original approved drawings is subject to a revision/re-examination fee. The fee will be determined by the reviewing officer based on the scope of the request and in accordance with current fee schedules. A review fee may be collected for each change request.
3. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

4. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[29] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowed Height to the midpoint of the roof of 8.9 metres per section 814.3(5) is varied to allow for an excess of 1.8 metres, thereby increasing the maximum Height to 10.7 metres.
2. The maximum allowed Height to the peak of the roof of 10.4 metres per section 52.2(c) is varied to allow for an excess of 1.2 metres, thereby increasing the maximum Height to 11.6 metres.

Reasons for Decision

[30] The proposed development, a Single Detached House with Unenclosed Front Porch, balcony, Basement development (NOT to be used as an additional Dwelling) and fireplace, and to demolish an existing Single Detached House, is a Permitted Use in the (RF1) Single Detached Residential Zone.

[31] The Development Officer undertook community consultation as outlined in section Section 814.5 of the *Edmonton Zoning Bylaw* as there was a variance to Height in the Mature Neighbourhood Overlay.

[32] Adjacent to the subject Site there exist Single Detached Houses to the east and west, a substantial (A) Zone ravine to the south, and an (AP) park space to the north.

[33] The Board heard submissions from the Appellant regarding the proposed development and its potential impacts. The Board noted that the proposed development as submitted will meet the Purposes of the many applicable statutory plans: the RF1 Zone, the Mature Neighbourhood Overlay, the North Saskatchewan River Valley and Ravine System Protection Overlay, and the Cromdale/Virginia Park Area Redevelopment Plan.

[34] While the Appellant did receive a report from Geotechnical Engineers at the City of Edmonton Integrated Infrastructure Services, in response to circulation from the Development Officer, the recommendations presented therein do not preclude this development from being permitted.

[35] The Board accepts the arguments of the Appellant that there will be no sun shadowing effect on the two abutting neighbours as there is only park space to the north and south of the subject Site and the excess Height is contained within the (north) front 11.6 metres of the proposed development, which also mitigates a sun shadowing effect.

[36] The excess in Height is due to the proposed gable design of the House which the Appellant described as part of the architectural treatment including varying roof lines using a variety of materials and a loft overlooking the rear yard.

- [37] The Board finds, based on the submissions received, that the required variances to Height are in scale to surrounding residential development. The Board accepted the Appellant's desire to include extra ceiling Height in the stairway and landing allowances for access to the top floor and rear balcony of the development, given there were no undue impacts demonstrated. A significant mitigating feature to any potential impacts from Height is the roof feature where the highest peak point is not on the immediate street face, but massed appropriately in the middle of the Single Detached House. The Board also noted that the Development Officer has no discretion to vary Height.
- [38] The Appellant discussed their development plans with their neighbours and received support for the proposed development as evidenced in a petition. Also, the Development Officer noted in their Written Submissions that during their Community Consultation they received one letter of support from a property within 30 metres of the Site.
- [39] No opposition was received from neighbouring property owners and no one appeared in opposition at the hearing. There was also no opposition received by the SDAB from the Community League.
- [40] Based on the above, it is the opinion of the Board 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.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Development & Zoning Services, Attn: K. Payne / A. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Candice Hoyt v Development Authority of the City of Edmonton, 2019 ABESDAB 10203

Date: December 5, 2019
Project Number: 340735686-001
File Number: SDAB-D-19-203

Between:

Candice Hoyt

and

The City of Edmonton, Development Authority

Board Members

Shari LaPerle, Presiding Officer
Vincent Laberge
Chris Buyze
Laura Delfs
Lyll Pratt

DECISION

[1] On November 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 3, 2019 for an application by Candice Hoyt. The appeal concerned the decision of the Development Authority, issued on October 28, 2019, to refuse the following development:

To operate a Major Home Based Business (Bed and Breakfast - Airbnb with 1 Sleeping Unit).

[2] The subject property is on Plan 194AW Lots A,X, located at 9366 – Cameron Avenue NW, within the (RF2) Low Density Infill Zone. The Mature Neighbourhood Overlay and the Riverdale Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments and the refused Development Permit;
- The Development Officer's written submission;
- The Appellant's written submissions;
- Two letters from neighbouring property owners in opposition to the proposed development; and
- One online response in support of the proposed development.

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

- Exhibit A – Two photographs showing the street view of the neighbourhood submitted by 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 Appellants, C. and D. Hoyt

[8] The Bed and Breakfast (B&B) is a one room unit at the back of the dwelling.

[9] The B&B is used by a single tourist for up to six weeks at a time.

[10] Individuals using the B&B do not usually have a vehicle.

[11] They have been operating the B&B since 2015 until they recently found out a Development Permit was required.

[12] They spoke to the neighbouring property owners and received support from approximately 77 percent of the neighbourhood.

[13] One of the letters received in opposition had concerns mainly due to parking. In their opinion, the majority of guests do not drive cars and the operation of a B&B will not increase traffic or parking on the street.

- [14] Guests can walk to downtown amenities and they can use public transportation, which is approximately 350 metres from the subject site.
- [15] If a tourist requires a vehicle, they are able to work with their adjacent neighbour to secure parking on their driveway that can accommodate four vehicles.
- [16] They ensure that they are at the residence when guests are at the subject site.
- [17] In their opinion, refusing the permit due to parking is not a valid reason.
- [18] They referred to photographs showing parking along the road in front of their house and the house that has provide driveway access if necessary (*Exhibit A*).
- [19] The Appellants provided the following information in response to questions by the Board:
- a. Parking permits are required for this area of Cameron Avenue, and the Appellants have been issued two permits that allow parking in front of their property. They are also able to obtain temporary parking passes for their guests from the Residential Parking Program, but they find the process to be onerous.
 - b. The parking restriction is from 9:00 a.m. to 5:00 p.m. Monday to Friday with a two-hour limit to prevent people from parking for the whole day during work hours downtown. Parking is allowed all day during the weekend.
 - c. It would be difficult to park in the rear yard where there are concrete tiles due to the slope.
 - d. The majority of driveways are in the rear of the property where people park. Only a few people park on the road.
 - e. They do not have any on-site parking at their property.
 - f. They do not intend to advertise for the B&B until the appeal process is over. They intend to indicate that restricted parking is available when they advertise the B&B.

ii) Position of D. Persson, an affected Property Owner in Opposition of the Appellant

- [20] She has owned two rental properties since 1989 east of the subject site.
- [21] In her opinion, parking has been an issue for years. However, some of the parking issues have been alleviated with the two-hour parking restriction.
- [22] The laneway behind Cameron Avenue has been closed.

- [23] The hill to the river valley can be difficult to drive on in the winter, which makes it difficult for residents to access their rear driveways.
- [24] Most of the neighbouring property owners have two cars and some vehicles are parked on the street.
- [25] There is an apartment building across the street from the subject site that does not always have enough room for people to park.
- [26] There are times on the weekend where the street is full of vehicles.
- [27] She is concerned that the Appellant may have talked to tenants rather than property owners.
- [28] Her main concern is parking and she is concerned how it will be monitored.
- [29] She spoke to neighbours along Cameron Avenue who were not aware of the B&B.
- [30] The neighbours that she spoke to also have concerns regarding parking.
- [31] Ms. Persson provided the following information in response to questions by the Board:
- a. Her tenants each have two cars and two parking permits.
 - b. She has not seen any unusual activity since the B&B started operating in 2015.
 - c. She agrees that this area is a walkable community.

iii) Position of the Development Officer, K. Yeung

- [32] The Development Authority did not appear at the hearing and the Board relied on Mr. Yeung's written submission.

iv) Rebuttal of the Appellant, C. and D. Hoyt

- [33] They spoke to some of the residents at the apartment building across the street who indicated that they received notice of the hearing but did not submit anything.
- [34] They could rent out their house to anyone which does not require a development permit.
- [35] They are agreeable to all of the suggested conditions of the Development Officer.
- [36] The B&B would not change the character of the neighbourhood if even one car came to the site on occasion.

[37] Their B&B advertisement specifies one guest. They have tried to have more than one guest at a time but that did not work out.

Decision

[38] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
4. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
5. If there are visits associated with the business the number shall not exceed the number applied for with this application.
6. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
7. The number of temporary sleeping accommodations on-site shall not exceed two. Cooking facilities are prohibited within temporary sleeping accommodations (Section 75.7).
8. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
9. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.
10. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
12. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location.

ADVISEMENT:

1. This Development Permit is not a Business Licence.
- [39] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required number of two on-site parking spaces per Section 54.2, Schedule 1(A)(3) and (8)(a) is varied to allow a deficiency of two on-site parking spaces, thereby allowing no on-site parking spaces.

Reasons for Decision

- [40] The proposed development, a Major Home Based Business (Bed and Breakfast – Airbnb with 1 Sleeping Unit) is a Discretionary Use in the (RF2) Low Density Infill Zone.
- [41] Based on the evidence submitted, the Board is satisfied that the Principal Dwelling will remain the primary residence of the Appellants. The Board was also satisfied that the proposed operations of the one bedroom Bed and Breakfast will fulfill section 7.3(7), of the definition of a Major Home Based Business:
- The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building.*
- [42] The Board heard that the scale of the business is limited, with only one guest and one room used for the Bed and Breakfast operations.
- [43] The Site in question features a number of physical Site limitations that were thoroughly discussed by all parties at the hearing. This includes a relatively small lot, small rear amenity space, no current access to the adjacent lane, and no on-site parking.
- [44] All parties at the hearing agreed that in the winter, driving conditions on the hill on Cameron Avenue can be difficult for residents. Residents are unable to use the lane due to the slope and are accustomed to parking on Cameron Avenue.
- [45] Notwithstanding the difficulties this presents, the City has implemented two-hour restricted parking on Cameron Avenue for some time and parking passes are available for residents in the neighbourhood. The Board heard evidence that this parking pass system is adequately meeting the needs of the neighbourhood.
- [46] The Board was presented with photographic evidence that there is sufficient on-street parking for residents during the day, and evening hours/weekend parking is unrestricted and available to the public, which meets the needs of the neighbourhood at these times.

- [47] Based on the evidence submitted, the slope of the hill in the rear lane makes it difficult for residents to access and use this area. There are also wooden stairs that control the grade and prevent the Appellant's possible access to parking at the rear of the subject Site. The Board agreed with the Appellant that it would likely not be possible to create on-site parking in the rear of the Site, even if they desired to do so.
- [48] The Board heard evidence from the Appellants that the subject Bed and Breakfast attracts guests who do not require a vehicle given the proximity of public transportation and downtown amenities. This area near Cameron Avenue is considered to be a walkable neighbourhood.
- [49] The Appellants limit the number of guests at the Major Home Based Business to one at a time, and the Board believes this will address the potential impacts of any parking issues if the client brings a vehicle. The Appellants also have an agreement with an adjacent neighbour that guests could park on their driveway if needed.
- [50] The Board notes it has received written opposition from two neighbouring property owners and one email in support of the Bed and Breakfast.
- [51] The Appellant further provided the Board with a petition from neighbouring property owners within the 60-metre radius that are in support of the proposed development.
- [52] Overall, the Board is satisfied that the Major Home Based Business meets the regulations of section 75.3 of the *Edmonton Zoning Bylaw* that states "The business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the zone in which it located."
- [53] Based on the evidence submitted by both parties, the Board is satisfied that the proposed Major Home Based Business is compatible with the residential nature of the neighbourhood, particularly given the scale and nature of its proposed operations. The impact of this Bed and Breakfast will be indistinguishable from another adult resident on the Site.
- [54] Based on the above, it is the opinion of the Board 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.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Development & Zoning Services, Attn: K. Yeung / A. Wen

Important Information for the Applicant/Appellant

1. This is not a Business Licence. A Business Licence must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: CC Growth Corp. v Development Authority of the City of Edmonton, 2019
ABESDAB 10204

Date: December 5, 2019
Project Number: 344042295-002
File Number: SDAB-D-19-204

Between:

CC Growth Corp.

and

The City of Edmonton, Development Authority

Board Members

Shari LaPerle, Presiding Officer
Vincent Laberge
Chris Buyze
Laura Delfs
Lyll Pratt

DECISION

[1] On November 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 7, 2019 for an application by Planworks Architecture Inc. The appeal concerned the decision of the Development Authority, issued on November 6, 2019, to refuse the following development:

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

[2] The subject property is on Plan 1822765 Blk 13 Lot 64, located at 9325 – 156 Street NW, within the (CB2) General Business Zone. The Main Streets Overlay applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submissions;
- A letter in opposition from the West Jasper / Sherwood Community League;
- An email in opposition from a neighbouring property owner; and
- An online response in opposition.

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

- Exhibit A – City of Edmonton Slim Map of the area, submitted by the Appellant.
- Exhibit B – SDAB-D-19-192 Decision, submitted by the Appellant.
- Exhibit C – Notification Map, submitted by 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, K. Haldane, Ogilvie LLP representing CC Growth Corp.

- [8] Section 340.1 states that the General Purpose of the CB2 General Business Zone is “to provide for businesses that require large Sites and a location with good visibility and accessibility along, or adjacent to, major public roadways.”
- [9] The CB2 Zone is an intense commercial zone with a variety of Permitted Uses as highlighted in his submission, one being a Cannabis Retail Sales Use (TAB 2).
- [10] Some of the Uses could cause more of a nuisance on surrounding properties than a Cannabis Retail Sales Use would.
- [11] Section 70.2(b) states that any Site containing Cannabis Retail Sales shall not be less than:

100 metres from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.

- [12] The park east of the subject site is zoned (AP) Public Parks and the Development Officer has no discretion to vary that separation distance regulation.
- [13] Section 819 of the Main Streets Overlay applies to the subject site. The General Purpose of this 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.
- [14] The proposed development will be oriented toward 156 Street. There will be no entrances on the east or south side of the subject site. This will comply with the Main Streets Overlay.
- [15] Section 819.8 states:
- All vehicular access shall be from an Abutting Lane. Where there is no Abutting Lane, vehicular access shall be provided from a flanking public roadway. When a Site with existing vehicular access from a public roadway other than a Lane is redeveloped, the existing vehicular access shall be closed where an Abutting Lane exists, or relocated to a flanking public roadway where an Abutting Lane does not exist.
- [16] The City of Edmonton slim map and aerial photograph shows the context of what the area looks like and the location of the subject site and the Sherwood Community Park (TAB 5).
- [17] A slim map (*Exhibit A*) shows that there is a 100-metre separation buffer around the Sherwood Community Park. The 100-metre buffer goes through the subject site but not all the way to 156 Street and west site boundary. The measurement is from site boundary to site boundary and not to the door of the Cannabis Retail Sales Use (TAB 5).
- [18] The aerial photograph shows the location of the subject site in proximity to the buildings in the park where there is a community hall, soccer field, and a playground on the southeast corner of the Sherwood Community Park (TAB 5).
- [19] The architectural plans show that the building faces 156 Street. The bay for the proposed Cannabis Retail Sales Use is in the middle on the west side of the building.
- [20] An aerial site plan was referenced that shows the neighbourhood with a sketch of the building showing that all parking will be on the east side of the building between the RF1 Single Detached Residential Zone, the Park, and the commercial uses that occupy the building. The photograph shows the 100-metre radius from the back door of the Cannabis Retail Sales which brushes over the AP Zone boundary.
- [21] The Google map shows a walking distance path of approximately 143 metres from the door of the Cannabis Retail Sales Use to the Park (TAB 6).

- [22] The distance from the corner of 156 Street and 93a Avenue to the edge of the park is approximately 113 metres. The edge of the park to the playground is approximately 72 metres.
- [23] Mr. Haldane referenced City of Edmonton Bylaw 14614, *Public Places Bylaw* and stated that it is against the law to smoke cannabis in the Sherwood Community Park but not on the sidewalk across from the park.
- [24] In a previous SDAB-D-19-192 decision, the Development Officer indicated at that hearing that he was not aware of any problems related to the proximity of existing Cannabis Retail Sales to lands zoned A or AP within the City (*Exhibit B*).
- [25] With regard to the letters in opposition, the concerns do not arise from that the separation distance of 71 metres is too close and 100 metres is fine. They are more concerned that cannabis will fall into the hands of children.
- [26] The City in a recent Court of Appeal permission to appeal application suggests that the Court of Appeal decision, *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 is misinterpreted by the Board and the Board needs to rethink how they grant variances to the separation distances between sensitive uses like parks, libraries, schools, and other Cannabis Retail Sales Uses. In his opinion, there is no harm that will arise with the separation distance.
- [27] He provided the Board with a document outlining 20 previous SDAB decisions granting variances to sensitive uses, excluding Direct Control appeals.
- [28] The Use itself is regulated and from a planning perspective in the CB2 Zone, apart from the concern to distribute to minors, this is a better Use for the site than other Permitted Uses.
- [29] With the regulations to operate a Cannabis Retail Sales, the proposed development will not have an impact on the surrounding neighbourhood.
- [30] Mr. Haldane provided the following information in response to questions by the Board.
- a. The entrance to the proposed development will be off of 156 Street. There will be a second door that will be used for emergency purposes. Customers will be required to go around the building to access the front door.
 - b. He could not confirm where signage would be on the subject site.
 - c. He is agreeable to all of the suggested conditions of the Development Officer.
 - d. He could not confirm if the subject site is fully developed.

ii) Position of the Development Officer, I. Welch

- [31] There is an ongoing need for research and that is currently taking place as to the various effects of Cannabis in the built environment.
- [32] Many Uses have special regulations that are specific to siting and design criteria in the *Edmonton Zoning Bylaw*.
- [33] In his opinion, section 70 for Cannabis Retail Sales is no different. You can have Uses on the subject site but not without conditions or there could be a potential of harm or other impacts.
- [34] Even before Cannabis was legal, there was an appreciation that Cannabis is not good for children and should be restricted. This is not just access at the point of sale but access for potential of minors to access Cannabis in any way.
- [35] The subject park is used regularly by minors and children and is used by minor soccer and the community league.
- [36] There are two parts to enforcement of Cannabis. The actual enforcement of the law and the creation of conditions that minimize the ability to breach the law.
- [37] Section 70 regulations are part of the law by saying Cannabis should not be near where children congregate.
- [38] This is not a question of harm but a need to look at the broader public policy concern.
- [39] In his opinion, a 100-metre in separation distance is reasonable.
- [40] He would not grant the variance even if he had the power to do so.
- [41] It is not a question of evidence of harm but the question of public policy and what as a community is believed as potentially harmful.
- [42] In his opinion, given the overall site context and the context of the creation of the City regulations, the variance should not be granted.
- [43] Mr. Welch provided the following information in response to questions by the Board.
- a. The regulations in the separation distance are to limit the opportunity for children to be able to obtain Cannabis product.
 - b. If a Cannabis Retail Sales is located closer to a park that minors use, there is an increase that children could have access to Cannabis.

iii) Rebuttal of the Appellant

- [44] The separation distance measurement is from site-to-site. The entrance to the Cannabis Retail Sales faces away from the Sherwood Community Park.
- [45] They could have a Cannabis Retail Sales only 100 metres away with the Cannabis Retailer facing the park with a main door on the site boundary and that Use would be permitted.
- [46] Customers have to walk around the building to access the entrance to the subject site.
- [47] Parking for the Cannabis Retail Sales at the rear of the building is the only thing that will face the Sherwood Community Park.

Decision

- [48] 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).

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. Signs require separate Development Applications.
3. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

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

1. The minimum required separation distance for any Site containing Cannabis Retail Sales from public lands of 100 metres per section 70.2(b) is varied to allow a deficiency of 29 metres, thereby decreasing the minimum allowed to 71 metres.

Reasons for Decision

[50] Cannabis Retail Sales is a Permitted Use in the (CB2) General Business Zone.

[51] The proposed development, to change the use from a General Retail Store to a Cannabis Retail Sales, and construct interior alterations was refused by the Development Authority because the proposed Cannabis Retail Sales Use is 71 metres away from public lands (AP Public Parks Zone (Sherwood Community Park)).

[52] The Board has granted the variance to this separation distance for the following reasons:

1. The Main Streets Overlay applies to the subject Site and one of the requirements of the Overlay, is requiring the orientation of the main entrance for the proposed development to face west to 156 Street.
2. The Development Authority provided a technical review of the proposed development and the Board confirms that there is only a separation distance requirement and all other aspects of the development comply with the *Edmonton Zoning Bylaw*.
3. The Board was provided with evidence that the AP zoned Sherwood Community Park, which causes the separation distance deficiency, has no sitting park benches, picnic tables, structures, or playground within the 100 metres separation from the Cannabis Retail Sales store. Those park features are in the southeast corner of park Site and would require a significantly larger walking distance from the proposed development.
4. The Board received opposition from the West Jasper / Sherwood Community League as well as two letters from the public in opposition to the proposed development. These concerns can be summarized as having concern for: the proximity of the

proposed development to youth using the park, the potential that users of the Cannabis Retail Sales Use would consume products from the store at the park, and that the cannabis will in some way be visible and influence these minors.

The Board agrees with the Appellant's submission that the *Public Places Bylaw* prohibits smoking of all sorts in AP Public Park Zones such as this Community Park and that smoking would not be allowed except on the sidewalk abutting a park site.

The Board also notes that minors are prohibited from entering the proposed Cannabis Retail Sales development and that Alberta Gaming, Liquor and Cannabis (AGLC) regulations limit the visibility of any products from outside the store.

5. The proposed development is not accessible from the east side of the building which would be in closer proximity to the Park Site. Any clients of the proposed development will be required to use 156 Street to access the store and the Board was provided evidence that pedestrian walking distance to the front door of the Cannabis Retail Sales to the Park Site would be 143 metres.

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



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Development & Zoning Services, Attn: I Welch / H. Luke / P.
Bekederemo
City of Edmonton, Law Branch, Attn: M. Gunther
City of Edmonton, Business Licensing, Attn: A. Hameed

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.