

# EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Cameron Beech v Development Authority of the City of Edmonton, 2019 ABESDAB 10161

Date: November 19, 2019  
Project Number: 315278379-001  
File Number: SDAB-D-19-161

Between:

Cameron Beech

and

The City of Edmonton, Development Authority

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Board Members

Brian Gibson, Presiding Officer  
Mark Young  
Debby Kronewitt-Martin  
Laura Delfs  
Chris Buyze

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## DECISION

[1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on October 2, 2019, made and passed the following motion”

“That the appeal hearing be scheduled for November 6 or 7, 2019 at the written request of the Appellant.”

[2] On November 6, 2019, the Board made and passed the following motion:

“That SDAB-D-19-161 be raised from the table.”

[3] One November 6, 2019, the Board heard an appeal that was filed on September 9, 2019 for an application by Cameron Beech. The appeal concerned the decision of the Development Authority, issued on August 20, 2019, to refuse the following development:

**Construct exterior alterations (new front access, Driveway and parking space, 4.57 metres by 17.37 metres).**

- [4] The subject property is Plan 4847KS Blk 36 Lot 23, located at 16046 - 93 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [5] The following documents were received prior to the hearing and form part of the record:
- A copy of the refused Development Permit and the proposed plans;
  - The Development Officer's written submission; and
  - An email in support of the proposed development from an adjacent property.

**Preliminary Matters**

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] 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, C. Beech*

- [9] Mr. Beech spoke to his neighbours who indicated they have no concerns with the proposed front driveway and parking space.
- [10] There are several driveways in the neighbourhood that are similar or the same as the proposed front driveway and parking space.
- [11] He has been parking in the front of the property and was not aware that a permit did not exist.
- [12] He would like to park his recreational vehicle in the front of the subject site.
- [13] He is willing to pave the parking area in the front yard so it is aesthetically pleasing for the neighbourhood.
- [14] In his opinion, the proposed front access and driveway will not negatively impact the neighbouring property owners.
- [15] Mr. Beech provided the following information in response to questions by the Board:
- a. He confirmed that the proposed driveway area was being used for parking.

- b. The existing parking area in the front yard is finished gravel.
- c. He would like to use the parking area for his recreational vehicle year-round.
- d. He spoke to the neighbouring property owners who are in support of the proposed driveway but he does not have anything in writing from them.
- e. There is a rear double detached garage with a parking pad at the rear of the subject site that is used to park his truck. There is no space to park the recreational vehicle in this location.
- f. The parking area in the front yard was in existence when he purchased the property in 2014.
- g. He is aware of one property in the neighbourhood that has a second driveway that leads to a garage.
- h. There will be no issue with vehicles backing onto 162 Street as it is not a busy roadway.
- i. He confirmed that he was unaware that he could not park in this area.

ii) *Position of the Development Officer, K. Payne*

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

### **Decision**

[17] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

### **Reasons for Decision**

[18] The proposed development, to construct exterior alterations (new front access, Driveway and parking space, 4.5 metres by 17.37 metres), is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.

[19] Section 814.3(17) of the *Edmonton Zoning Bylaw* states "Where the Site Abuts a Lane, vehicular access shall be from the Lane and no existing vehicular access from a public roadway other than a Lane shall be permitted to continue."

[20] Section 54.2.2(e)(i) of the *Edmonton Zoning Bylaw* states that "parking spaces shall not be located within a Front Yard in a Residential Zone."

[21] The Appellant indicated that there is a double detached Garage with a parking pad that can be accessed from the rear Lane.

- [22] The Appellant indicated that the proposed Driveway and parking area in the Front Yard would accommodate his recreational vehicle to be parked at the subject Site year-round.
- [23] Based on the photographic evidence, the Driveways in the neighbourhood that exit onto 162 Street lead to rear detached Garages and are considered existing non-conforming developments. The proposed development would require the construction of a new concrete Driveway where there was no Driveway previously that would end at a parking pad in the Front Yard.
- [24] Section 814.1 states that the General Purpose of the Mature Neighbourhood Overlay is:
- ...to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.
- [25] The Board notes that although the Appellant indicated he received verbal support for the proposed development from neighbours, including one email in support, the Board agrees with the Development Officer that the proposed Front Yard Driveway and parking pad reduces the curb appeal of the property and does not fit into the context of any of the surrounding houses in this mature neighbourhood.
- [26] The Board was presented with no planning reasons to justify the addition of a Driveway and parking pad to the Front Yard of the subject Site.
- [27] Given the above reasons, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Brian Gibson, 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 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.
2. 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.

**EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**SDAB-D-19-193**

**Application No. 325661133-002**

An appeal to change the use from a General Retail Store to a Liquor Store, limited to 275m<sup>2</sup> (Proposed Floor Area 165m<sup>2</sup>) was TABLED TO DECEMBER 10 or 11, 2019.

# EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Planworks Architecture v Development Authority of the City of Edmonton, 2019  
ABESDAB 10194

Date: November 19, 2019  
Project Number: 341344192-001  
File Number: SDAB-D-19-194

Between:

Planworks Architecture

and

The City of Edmonton, Development Authority

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## Board Members

Brian Gibson, Presiding Officer  
Mark Young  
Debby Kronewitt-Martin  
Laura Delfs  
Chris Buyze

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## DECISION

[1] On November 6, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 15, 2019 for an application by Planworks Architecture. The appeal concerned the decision of the Development Authority, issued on October 9, 2019, to refuse the following development:

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

[2] The subject property is on Plan 8267ET Blk Z Lot 4, located at 12986 - 50 Street NW, within the (CB2) General Business Zone. The Kennedale Industrial Area Structure Plan 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 submission; and
- The Appellant's written submission.

### **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 K. Haldane (Ogilvie Law), Legal Counsel for the Appellant, Planworks Architecture*

- [7] The proposed development was refused because of a deficiency of 79 metres in the required setback of 200 metres, pursuant to section 70.1(a) of the *Edmonton Zoning Bylaw* (the "Bylaw").
- [8] Cannabis Retail Sales is a Permitted Use in the (CB2) General Business Zone, pursuant to section 340.2(6) of the *Bylaw*.
- [9] A City of Edmonton Slim Map was referenced to show the zoning of the subject site and the surrounding area.
- [10] The proposed location is across 50 Street from a (CB1) Low Intensity Business Zone. Aerial pictometry shows the location of the proposed development and the existing Cannabis Retail Sales (TAB 4 - Page 17).
- [11] The proposed development will be situated facing the inside of the parking lot of the subject site.
- [12] Pages 17 to 19 of TAB 4 show various angles of the two Cannabis Retail Sales sites that are within the 200-metre radius.
- [13] A photograph was referenced to show the proposed store location of the Cannabis Retail Sales (TAB 4 - Page 20).
- [14] An aerial site plan shows the existing businesses in the neighbourhood including the proposed development and the existing Cannabis Retail Sales (TAB 4 - Page 21).



- [15] A Google Earth aerial photograph shows the walking distance from the proposed development to the existing Cannabis Retail Sales which is 258 metres (TAB 5 – Page 23).
- [16] Photographs show the south and north street view on 50 Street (TAB 5 – Page 24 and 25).
- [17] A photograph of the strip mall of the existing Cannabis Retail Sales shows that there is no entrance on the side of the building and is oriented toward the parking lot (TAB 5 - Page 26 and 27).
- [18] A report from City administration to Council recommended the removal for distances between Liquor Stores (TAB 6). Mr. Haldane referred to the following excerpt from *Options for Managing Impacts of Major and Minor Alcohol Sales*:

**Impacts and Effectiveness of Zoning Bylaw 12800 Regulations**

. . . .

Administration suggests that zoning is not an effective tool for limiting the availability and consumption of a regulated substance. Zoning regulates the use of land, and the shape and location of development. It is not intended to regulate a specific type of product.

It is Mr. Haldane's opinion that Cannabis Retail Sales separation distance regulations are similar to the City report related to Liquor Stores.

- [19] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [20] Mr. Haldane provided the following information in response to questions by the Board:
- a. He could not confirm the signage for the proposed development. However, there will be pylon signs for vehicles travelling north and south on 50 Street for the proposed development and the existing Cannabis Retail Sales.
  - b. If the proposed development used a fascia sign to advertise, it would face north.
  - c. Vehicle access to the subject site can be from 50 Street but if vehicles are coming from the north they will need to turn onto Hermitage Road.

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

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

**Decision**

[22] 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. 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).
2. 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;
  - d. landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.
3. Signs require separate Development Applications.

[23] In granting the development the following variance to the *Edmonton Zoning Bylaw* (the “*Bylaw*”) is allowed:

1. The minimum required 200 metres separation distance between a Cannabis Retail Sales from any other Cannabis Retail Sales pursuant to section 70.1(a) is reduced by 79 metres to permit a minimum allowed separation distance of 121 metres.

**Reasons for Decision**

[24] The proposed development, a Cannabis Retail Sales Use, is a Permitted Use in the (CB2) General Business Zone.

[25] The Development Authority refused the development permit because the proposed Cannabis Retail Sales Use is 121 metres away from another Cannabis Retail Sales Use,

when section 70.1(a) of the *Bylaw* mandates that a Cannabis Retail Sales Use be at least 200 metres from another Cannabis Retail Sales Use.

[26] The Board grants the deficiency of 79 metres to section 70.1(a) of the *Bylaw* for the following reasons:

- a. Based on the photographic evidence, there is a major arterial roadway that creates a significant barrier that separates the two Cannabis Retail Sales stores. Further, the proposed Cannabis Retail Sales store is within a multi-unit commercial building facing north on the west side of 50 Street and the other Cannabis Retail Sales store is within an L-shaped multi-unit commercial building facing south on the east side of 50 Street. Based on the building orientation of the sites, there are no clear sightlines between the two Cannabis Retail Sales stores.
- b. While the proposed Cannabis Retail Sales store is 121 metres from the other Cannabis Retail Sales store, the Board notes that a pedestrian traversing between the two Cannabis Retail Sales stores would have to cross through a parking lot, two separate crosswalks on 50 Street and cross around an L-shaped multi-unit commercial building, which is a distance of approximately 258 metres.
- c. Section 340.1 of the (CB2) General Business Zone states “The purpose of this 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.” The Board notes that the proposed development meets the general purpose of the CB2 Zone and is surrounded by industrial and commercial zones.
- d. The Board did not receive any letters of objection regarding the proposed development or the variances required and no one attended in opposition to the proposed development.

[27] 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.



Brian Gibson, Presiding Officer  
Subdivision and Development Appeal Board

CC: City of Edmonton, Development & Zoning Services, Attn: S. Chow / H. Luke  
City of Edmonton Law Branch, Attn: M. Gunther

**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.*