



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: October 25, 2018
Project Number: 286172072-001
File Number: SDAB-D-18-163

Notice of Decision

- [1] On October 10, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 10, 2018**. The appeal concerned the decision of the Development Authority, issued on August 22, 2018, to refuse the following development:

Change the Use from General Retail to Cannabis Retail Sales.

- [2] The subject property is on Plan 8089ET Blk 42 Lot 19, located at 10120 - 151 Street NW, within the (CB1) Low Intensity Business Zone. The Main Streets Overlay and the Jasper Place Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submission and community survey.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair 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 Appellants, Mr. A. Jha and Mr. I. Zatolokin, representing 420 Wellness Inc.:

- [7] They are a responsible retailer and were invited to apply as part of the Edmonton Expression of Interest Lottery.
- [8] The proposed development complies with all of the regulations contained in the *Edmonton Zoning Bylaw* (the *Bylaw*) with the exception of the minimum required 200-metre separation distance from another Cannabis Retail Sales and therefore, a variance of 81 metres is being requested.
- [9] The subject site is located in the (CB1) Low Intensity Business Zone and Cannabis Retail Sales is a Permitted Use.
- [10] The site is located more than 200 metres from schools and public libraries and over 100 metres from provincial health care facilities, parks and City recreation centres.
- [11] The proposed development does not share the same roadway as the already approved development of another Cannabis Retail Sales and meets the AGLC recommended location requirements and separation distance between cannabis locations.
- [12] The Development Officer has limited variance powers pursuant to section 70(1)(a) of the *Bylaw* and cannot vary the minimum required separation distance between Cannabis Retail Sales by more than 20 metres.
- [13] It was their opinion that granting the requested variance would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [14] The 200-metre separation distance between Cannabis Retail Sales was established to prevent clustering of stores on one block, based on a review of the City's "Proposed Cannabis Land Use Framework: What We Heard and What We Did".
- [15] City maps of three different neighbourhoods were referenced to illustrate that it is common for one city block to contain two to three Cannabis Retail Sales locations. Granting the requested variance would allow for two Cannabis Retail Sales in the Canora neighbourhood which is similar to Cannabis store densities allowed in Eaux Claires, Prince Charles and Sherbrooke.
- [16] The Markup of Proposed Text Amendments to the *Bylaw* included "A limited variance power is provided to the Development Officer to deal with situations where cannabis store locations do not quite comply with the 200 m separation, but there would be no

adverse land use impacts”. Cannabis Retail Sales is a Permitted Use in the CB1 Zone and approving the requested variance will not necessitate any changes to the *Bylaw*.

- [17] The City undertook a public outreach campaign to better understand public opinion on Cannabis Retail Sales in order to help shape specific regulations. In response to the question of how close Cannabis Retail Sales should be to each other, the survey showed that the majority of the respondents did not have strong views on this issue. Therefore, granting the required variance is not likely to negatively impact public enjoyment of land in this neighbourhood.
- [18] There is evidence that proximity of residential units to recreational cannabis locations has a positive impact on property values. James Conklin (2017), author of the study: *Contact High: The External Effects of Retail Marijuana Establishments on House Prices* (“*Contact High*”), published in the Journal of Real Estate Economics found that residential properties located within 160 metres of a recreational cannabis location rose in price by 8 percent. The study looked at publicly available information in Denver, Colorado and compared property value prior to and after recreational use was legalized. The study further showed that residential units located further than 160 metres from recreational cannabis locations, did not show a statistically significant change in value.
- [19] The Jasper Place Area Redevelopment Plan states that Stony Plain (which includes the Canora area) is envisioned as a vibrant focal point for the four neighbourhoods and a focus point for change and redevelopment opportunities. The future Valley Line LRT will supplement existing bus transit. The Jasper Place Area Redevelopment Plan also highlights the fact that there is a “lack of diversity in businesses” and that “many commercial properties within the Stony Plain Road focus area are also built below the full potential...”.
- [20] These factors indicate a need for new and diverse businesses that would increase commercial traffic in the area. Granting the requested variance and allowing the proposed development will help to provide more diversity and it has the potential to generate additional commercial traffic, especially once the LRT Valley Line becomes operational.
- [21] Other municipalities have taken a lenient approach to retail cannabis separation distance requirements which have not resulted in a negative impact on land uses.
- [22] Neighbouring property owners were consulted regarding the proposed development. While the majority of those contacted were indifferent, six property owners provided written support. The results of their community consultation are in line with the opinions obtained through the public consultation process regarding separation distance requirements.
- [23] Approving the proposed development will not lead to a change in the landscape or have an adverse land use impact based on the future plans of the City for this area.

[24] Mr. Jha and Mr. Zatolokin provided the following information in response to questions from the Board:

- a) They acknowledged that the separation distance regulations were established to prevent clustering. Based on a review of studies prepared in Colorado, Washington and California, problems with clustering are usually the result of Alcohol Sales Uses and not cannabis.
- b) The main entrance is located on the south side of the building and does not front onto Stony Plain Road. It is not visible from the other Cannabis Retail Store. The illustrated sign in their documentation is the only signage that will be installed and it cannot be seen by motorists or pedestrians using Stony Plain Road.
- c) The submission provided to the Board was reviewed during the community consultation and everyone was advised that a variance was required in the minimum required separation distance.
- d) *Contact High* was reviewed to obtain evidence that the property values located within 160 metres of a Cannabis Retail Sales Use increased.
- e) Independent studies conducted in the United States have determined that the impact of alcohol sales create more negative impacts than cannabis sales.

ii) *Position of the Development Officer, Mr. I. Welch:*

[25] He acknowledged that the proposed Cannabis Retail Sales complies with the AGLC requirements. However, it does not comply with the municipal requirements.

[26] The separation distance map was referenced to illustrate that clustering will occur if this development is approved. There will be two stores located within one block of each other and possibly three depending on a review of another application.

[27] The Edmonton Expression of Interest Lottery requires applications to be dealt with in the order that they are received.

[28] The City's Cannabis Text Amendment Markup was referenced to illustrate that it was the intent of Council to prevent clustering when establishing the regulations in section 70 of the *Bylaw*. It was their intent not to have more than one Cannabis Retail Sales Use per block.

[29] Two of the Cannabis Retail Sales stores located in another neighbourhood that were referenced by the Appellant are separated by more than one full block.

- [30] The Study cited by the Appellant was prepared in a jurisdiction that operates under a fundamentally different planning regime and therefore, the land use impacts could be substantially different.
- [31] A variance would not have been granted for this development, even if he had the authority, because it would result in a clustering of this Use which would result in negative impacts along this portion of Stony Plain Road, between 151 and 156 Street, which can be considered a distressed area.
- [32] Significant improvement has occurred in the Stony Plain Road area over the past several years and will continue to improve as the LRT progresses into the neighbourhood. Many social problems have been experienced in the area and significant land use controls have been imposed in an attempt to address the problems.
- [33] Mr. Welch provided the following information in response to questions from the Board:
- a) The negative impacts that occur because of clustering are dependent on the Use Class. The impacts associated with Alcohol sales include the fact that the operating hours are very similar and the vitality of the streetscape is not maintained because of the staggered operating hours of a variety of different businesses in the area. This can also result in safety and security concerns. It has been found that clustering Alcohol Sales Uses together results in an increased temptation for individuals to purchase alcohol. He acknowledged that it is difficult to determine if the clustering of Cannabis Retail Stores will have similar negative impacts but the issue has to be considered during the creation of land use policies.
 - b) The separation distance is measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use.
 - c) Lengthy discussions regarding separation distances occurred during the public consultation process and he acknowledged that opinions were divided. However, in his view the imposition of some separation distance was not a bad thing.
 - d) The Cannabis Text Amendment Markup was referenced. The rationale regarding separation distances between Cannabis Retail Sales states “Separation distances are defined between cannabis stores to ensure an equitable distribution, to prevent clustering of cannabis stores in one neighbourhood, and to maintain the opportunity for a diversity of businesses in commercial areas”. In his opinion, it is relatively clear that it was the intent of Council to impose some reasonable restrictions without being overly restrictive.
 - e) Council will be reviewing section 70 in approximately one year once the impacts are known.
 - f) The decision regarding the issuance of a development permit for another Cannabis Retail Sales one block away has been put on hold until a decision is made on this

development permit because of the impact it will have on the separation distance requirements.

- g) The order in which development permit applications are reviewed has been established by the lottery system. This is critical in areas where there is the potential for clustering because approved Cannabis Retail Sales can impact the separation distance requirements being reviewed during the development permit application process for another Cannabis Retail Sales in the same area.
- h) The evidence provided by the Appellant in *Contact High* concluded that there are no negative impacts on property values located in close proximity to one Cannabis Retail Sales Use but it did not address the impacts of clustering.
- i) It was his opinion that *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 has two components. Although the Court determined that the Board must be provided with evidence to deny a variance it does not necessarily disregard the idea that broader general planning principles can be used in making a decision. Although specific evidence cannot yet be provided regarding the impacts of Cannabis Retail Sales, the broader land use considerations can be used. It is a broad general planning principle that the clustering of Uses, such as Alcohol Sales and Pawn Shops, are known to have a negative impact and this can be considered by the Board when making a decision.
- j) It was his opinion that the fact that the front entrance and sign are not visible from Stony Plain Road does not lessen the concern because the blocks in this area are very short.

iii) Rebuttal of the Appellant:

- [34] It is not appropriate to treat Cannabis Retail Sales the same as Alcohol Sales because cannabis is medicinal and should not be considered as a vice.
- [35] The studies from other jurisdictions found that alcohol and opioid usage was reduced following the legalization of cannabis. The AGLC considered these findings.
- [36] It was acknowledged that there will be clustering but cannabis is a harm reduction product and will not result in an increased crime rate. They are a responsible retailer and the variance should not be refused based on the unknown impacts of clustering.
- [37] The sale of cannabis is going to be highly regulated and will not adversely impact adjacent property owners. Mr. Jha and Mr. Zatolokin reiterated that the results of their community consultation demonstrate that the majority of property owners are indifferent and six have provided written support for the development.

[38] Mr. Welch clarified that the development permit is permanent once it is issued and runs with the land. The only condition is that the Cannabis Retail Sales Use must be open within nine months but is then free to operate in perpetuity. The business owner will then be required to renew the Business Licence annually.

[39] The Appellants had nothing further to add.

Decision

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

Reasons for Decision

[41] This is an application to change the Use from General Retail to Cannabis Retail Sales.

[42] Pursuant to section 330.2(3) of the *Edmonton Zoning Bylaw* (the *Bylaw*), Cannabis Retail Sales is a Permitted Use in the (CB1) Low Intensity Business Zone.

[43] The proposed development complies with all of the development regulations contained in the *Bylaw* with the exception of section 70(1) which states:

Any Cannabis Retail Sales shall not be located less than 200 metres from any other Cannabis Retail Sales. [...]

[44] Based on the evidence provided by the Development Authority, a Development Permit has been issued for a Cannabis Retail Sales Use located 119 metres from the subject Site and the Appellant is therefore, seeking a variance of 81 metres to the minimum required separation distance.

[45] Section 687(3)(d) of the *Municipal Government Act* states:

In determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[46] The Board has not granted the required variance, pursuant to section 687(3)(d) of the *Municipal Government Act* for the following reasons:

- a) Based on the evidence provided by the Development Authority, granting the required 81 metres variance will lead to a lack of diversity of retail Uses along this portion of Stony Plain Road.
- b) Separation distance requirements were established to promote a diverse nature of retail Uses in a commercial zone and reducing or eliminating these requirements is a valid planning concern.
- c) Policy 1.3.2.2, *Key consultation themes* of the Jasper Place Area Redevelopment Plan states:
- The Stony Plain Road commercial corridor was highlighted as a potential community asset that would be key to the success of the area.
 - Concerns around the quality of buildings along Stony Plain Road were raised and a desire for more diversity of businesses was expressed.
 - Mixed use development along the street was highlighted for its potential to revitalize the street.
- d) Granting a variance to the separation distance requirements pursuant to section 70(1) of the *Bylaw* will not be in keeping with the goal of Council to increase the diversity of retail businesses in this area.
- e) Evidence was not provided regarding any significant locational factors that would persuade the Board to grant the required variance. The Board notes that the proposed Cannabis Retail Sales Use and the existing Cannabis Retail Sales Use are located on relatively short blocks, they are not separated by a significant arterial roadway, and pedestrians can easily access both stores without having to cross a major roadway.
- f) The Board finds that the amenities of this neighbourhood could be adversely affected by granting the required variance because it will cluster two similar Uses in a small area and will result in a decrease in the diversity of retail businesses in this area. The Board was not provided with any valid planning reasons that would mitigate this concern.

[47] Based on all of the above, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land. Therefore the request for a variance is denied and the appeal has failed.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. R. Handa; Mr. Buyze; Ms. D. Kronewitt Martin, Ms. S. La Perle

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 & Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-18-164

Project Number: 287015970-001

An appeal to change the Use from General Retail to a Cannabis Retail Store was
WITHDRAWN



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: October 25, 2018
Project Number: 278868871-001
File Number: SDAB-S-18-010

Notice of Decision

- [1] On October 10, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 11, 2018**. The appeal concerned the decision of the Subdivision Authority, issued on September 6, 2018, to refuse the following subdivision:

Create one (1) additional Single Detached Residential Lot.

- [2] The subject property is on Plan 3624HW Blk 5 Lot 30, located at 13607 - 108 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the refused Subdivision application and tentative plan;
 - The Subdivision Authority’s written submissions;
 - The Appellant’s tentative plan and original written submission; and
 - One e-mail from an adjacent property owner in opposition.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Diagram used for the calculation of Site Width submitted by the Subdivision Authority;
 - Exhibit B – Rendering submitted by the Appellant; and
 - Exhibit C – Elevation drawings and floor plans submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Chair 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 678 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Subdivision Authority, Mr. B. McDowell and Ms. S. Mah:*

- [8] The Chair asked the Subdivision Authority to explain how the site width was calculated because it was noted that the Appellant arrived at a different calculation for the site width.
- [9] Ms. Mah explained that for an irregular shaped lot, the definition of Site Width contained in the *Edmonton Zoning Bylaw* is used. Site Width is defined as:

the horizontal distance between the side boundaries of the Site measured at a distance from the Front Lot Line equal to the required Front Setback for the Zone.

In this case the Zone is RF1, and the minimum front setback is 3.0 metres when there is a treed boulevard.

- [10] Ms. Mah used a step-by-step diagram (*Exhibit A*) from a guideline that is available on the Subdivision Authority's website to illustrate how the site width is calculated for a pie-shaped lot. The total width measurement for each proposed lot is 6.53 metres.
- [11] The front setback is used to determine where the front of the actual physical building will be located. In this case, site width was measured from the underlying Zone. The site width is used to determine if the lot will meet the minimum requirements. It is important to note that the definition of site width refers to the front setback for the Zone, not the requirements of the Mature Neighbourhood Overlay. In this case, because there is a treed boulevard, the front setback is 3.0 metres in this Zone. The Subdivision Authority does not consider the requirements of the Mature Neighbourhood Overlay. Those requirements are reviewed in context with the actual physical development.
- [12] The Chair clarified that her calculations were based on the fact that the definition of Site Width references Zone with a capital "Z" and that the requirements of the underlying Zone were considered regardless of any changes that may be imposed by an Overlay.
- [13] In response to a question from the Board regarding the definition of Zone, Ms. Mah indicated that discussions were held with the City Zoning Bylaw group and it was concluded that the Mature Neighbourhood Overlay regulations, in this context, do not

function like the regulations of the underlying Zone and is excluded from the definition. She reiterated that the underlying Zone in this case is the RF1 Zone.

- [14] In response to an additional question, Ms. Mah stated that the Mature Neighbourhood Overlay regulations are used as a tool at the development permit stage when reviewing the actual built form to ensure that the development is sensitive to existing development.
- [15] The Appellant has submitted an updated Certificate of Title to confirm that the 1.52 metre right-of-way that was located on the east side of the subdivided lot for a power pole has been discharged.

ii) Position of the Appellant, Mr. S. Burnstyn:

- [16] Mr. Burnstyn advised that he is a developer who specializes in inner city development. He is a responsible developer who is sympathetic to the neighbourhood and makes every attempt to ensure that the architecture is in line with adjoining properties.
- [17] The Chair asked Mr. Burnstyn to explain how the site width was calculated before addressing the merits of the appeal.
- [18] It was Mr. Burnstyn's opinion that the situation is ambiguous. The calculation of site width was based on the location of the structure on the lot rather than an arbitrary front setback of 3.0 metres. The lot width should be calculated further back based on the siting of the structure.
- [19] Mr. R. Smith, a land surveyor, stated that based on his experience, the requirement of a 3.0-metre front setback on an irregular shaped lot located on a crescent, will eliminate every irregular lot from being subdivided because they are not large enough to comply with that requirement. The subject site is more than 10,000 square feet in size and will maintain a large amount of space at the rear. It was his opinion that the proposed subdivision will not create any unnecessary hardship for development. Until 2017, site width was calculated based on the siting of the building on the lot. The proposed house will line up with houses on adjacent lots as required by the Mature Neighbourhood Overlay.
- [20] Mr. Burnstyn addressed the requested variance assuming that the Subdivision Authority calculated the site width correctly.
- [21] There are three options for the site as it exists. The existing bungalow could be preserved if the foundation was repaired but it has been determined that it is not economically feasible to make those repairs. The house could be demolished and a new 5,000 square foot house could be built. However, it was his opinion that a house of that size is not consistent with existing development in the area. Subdividing the lot and building two single detached houses is in keeping with the City's desire to increase density in mature neighbourhoods and will be more consistent with the size and architecture of existing

houses in this neighbourhood. It was his opinion that the proposed developments will increase property values in the area.

[22] A rendering of the proposed developments, elevation drawings and floor plans were submitted, marked *Exhibit B and C*.

[23] The subdivided lots will be pie-shaped and the houses will become larger toward the rear of the lot. The subdivision will create two lots, approximately 2, 200 square feet in size and allow ample space in both the front and rear yards to attract families with children, which in his opinion is what the neighbourhood is looking for.

[24] Mr. Burnstyn provided the following information in response to questions from the Board:

a) These lots are wider at the rear and can accommodate the construction of detached garages which will provide on-site parking and mitigate any problems associated with street parking.

b) The requirements of the Mature Neighbourhood Overlay will be respected.

c) He is not aware of any similar subdivisions in this neighbourhood.

[25] In response to a concern raised by an adjacent property owner regarding the safety of children in the neighbourhood, Mr. Burnstyn advised that the lots will be large enough to provide ample play space in the rear yard without having to play in the rear lane.

[26] Motorists have to be cautious when accessing any garage from the rear lane.

[27] It was confirmed that there are three properties located across the lane from the subject site that are reverse pie-shaped lots.

[28] Each of the proposed lots will be 13 metres wide at the rear and will accommodate more than two parking spaces.

[29] Mr. D. Stoyko, a surveyor with Pals Geomatics Corp. confirmed that numerous subdivisions have occurred in this neighbourhood but not on pie-shaped lots.

[30] Mr. Burnstyn has subdivided other lots in this neighbourhood. One of those subdivisions could have resulted in the creation of four lots but he chose to only create three lots in an attempt to be sympathetic to the wishes of the neighbours.

iii) Position of the Subdivision Authority, Mr. B. McDowell and Ms. S. Mah:

[31] Ms. Mah clarified that it is possible to have a front setback of 3.0 metres in the RF1 Zone and that it could be the point where the building starts but it is context specific to adjacent

properties. There is a range of setbacks contained in the Mature Neighbourhood Overlay requirements and it would depend on the location of the houses on adjacent properties. The front setback on the adjacent properties would determine the front setback on the subject site. Even though the minimum required setback is 3.0 metres, a development would still be required to fall within the front setback range.

- [32] The subject site is located in North Glenora, west of the downtown core. This lot falls within the North Glenora Community Plan which supports a variety of housing needs while maintaining the current predominance of single family dwellings.
- [33] An aerial map was referenced to illustrate the existence of a single detached house with a detached garage, a mature tree in the front and a turfed landscaped boulevard at the front.
- [34] The proposed subdivision plan was reviewed with a Development Officer who agreed with her method of calculating the site width. Ms. Mah reiterated that the site width was calculated from the front setback in the underlying RF1 Zone and because there is a treed landscaped boulevard, the setback is 3.0 metres. The width for both lots is 6.53 metres which does not comply with the minimum required 7.5-metre site width per section 110.4(1)(b) of the *Edmonton Zoning Bylaw*.
- [35] This proposal is not in keeping with the recent amendments made to the *Edmonton Zoning Bylaw* in June 2017, to have an absolute minimum site width of 7.5 metres. Council approved this amendment in order to provide certainty for developers and the public regarding an acceptable skinny single detached development in Edmonton.
- [36] The subdivision application was also refused because it will create a future redevelopment hardship. The proposed subdivision will create two non-conforming lots because they will not comply with the minimum site width requirement. Therefore, at the development permit stage, the land owner will require a variance or the development permit will be refused and result in an appeal to the Subdivision and Development Appeal Board.
- [37] Nine adjacent land owners were notified of the proposed subdivision and three responses were received in opposition based on concerns regarding the deficiency in the site width, decreased parking, increased traffic, too much infill in the neighbourhood, and possible damage to the rear lane.
- [38] The Subdivision Authority agrees with the concerns of the adjacent property owners regarding the deficiency in the minimum required site width.
- [39] The subdivision application was circulated to numerous City agencies and departments, including Transportation, Drainage Services and EPCOR and they all concluded that there is technical capacity to support for this type of development.

- [40] Photographs were referenced to illustrate different street views of the subject site including the mature tree, landscaped boulevard and rear lane. If the subdivision is approved access will have to be from the lane.
- [41] If the decision is overturned the recommended conditions should be imposed.
- [42] Ms. Mah and Mr. McDowell provided the following information in response to questions from the Board:
- a) Ms. Mah's decision was made based on the minimum site width requirement of the underlying RF1 Zone.
 - b) A recent amendment to the *Edmonton Zoning Bylaw* was passed in February 2018. The front setback of the underlying RF1 Zone was previously 6.0 metres and it was changed. This will cause changes in terms of which lots can be subdivided if the minimum site width is not met.
 - c) Mr. McDowell agreed with the Appellant that the current setback will disqualify many lots.
 - d) In April 2015, skinny lots were approved which resulted in several subdivision applications as well as several complaints. At first the minimum site width was 7.6 metres but that disqualified many 49 and 49 ½ foot lots. The Subdivision Authority began exercising discretion on these approvals but it was not received well by adjacent land owners and Council. A report was prepared for a discussion with Council and it was determined that a site width of 7.5 metres was acceptable. The Subdivision Authority has no discretion to vary the minimum required site width.
 - e) Numerous subdivisions have occurred in this neighbourhood since the amendment but not on irregular shaped lots.
 - f) The Subdivision Authority would never impose a condition that development cannot occur within so many metres of the front property line.

iv) Position of Affected Property Owners in Opposition to the Appellant:

Ms. J. Nedved

- [43] She has lived in this neighbourhood since 1984 and renovated her house by building an addition between 2008 and 2010. It is not necessary to develop a 5,000 square foot house on this lot.
- [44] The lane way is dangerous because there is a "Y" intersection with a curve and a blind spot. Children use the lane to go back and forth from school.

- [45] New subdivisions have resulted in small lots with no space for children to play.
- [46] Parking on the front street is already very congested.
- [47] The creation of a single family dwelling with green space for children to play and a garage to provide parking is acceptable.
- [48] Children play hockey in the rear lane and the front street but they are supervised by their parents.
- [49] Two houses setback with a garage will not leave any green space for children to play.
- [50] She would like the value of her house to be preserved.

Mr. & Mrs. Ralston:

- [51] They agreed with the concerns that have already been raised.
- [52] The major concern is the number of subdivisions that are occurring in this neighbourhood. Ten subdivisions have now occurred and they are concerned about what this means for the overall community in terms of people coming into the houses that are being constructed.
- [53] There are larger issues in terms of the services required to maintain the number of new houses being constructed.
- [54] Setback requirements have been established to protect land owners and the neighbourhood and they should be respected.
- [55] Subdividing lots will not allow revitalization because the houses being constructed cost substantially more than the existing houses. Houses have been built across the street are selling for \$600,000 to \$700,000, which most young families cannot afford.
- [56] The new houses and yards are small which is not attractive to young families and is not conducive to long term residency.
- [57] There is a variety of housing in the neighbourhood, including apartments and multi-family units, and the neighbourhood is very inclusive and accepting.
- [58] The proposed lots are larger than some of the other subdivided lots in this neighbourhood which provides an opportunity for a nicer development.

v) *Rebuttal of the Appellant*

- [59] Mr. Burnstyn reiterated that he is sympathetic to the overall perspective of the neighbourhood and the concerns of the neighbours.
- [60] Each of these lots will be approximately 5,200 square feet in size which would be considered a full sized lot in any other neighbourhood.
- [61] There will be ample amenity space in the rear yard to allow for the construction of a garage and provide space for children to play.
- [62] The architectural character of the neighbourhood will be respected and it was his opinion that the proposed development will be attractive for families and will be beneficial for the neighbourhood.

Decision

- [63] The appeal is **ALLOWED** and the decision of the Subdivision Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority, subject to the following **CONDITIONS**:
1. that the owner obtain a permit to demolish the existing dwelling and garage prior to endorsement of the final plan. Demolition permits can be obtained from Development Services located on the 2nd Floor of Edmonton Tower at 10111 – 104 Avenue; and
 2. that the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.
- [64] In granting the subdivision, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum Site Width per section 110.4(1)(b) is varied to allow a deficiency of 0.97 metres, thereby decreasing the minimum required Site Width to 6.53 metres for each of the two lots.

Reasons for Decision

- [65] The proposed subdivision was refused because it did not comply with the minimum development regulation identified in section 110.4(1)(b) of the *Edmonton Zoning Bylaw* (the *Bylaw*).
- [66] The subject Site is zoned (RF1) Single Detached Residential Zone and the minimum required Site Width is 7.5 metres. The Site Width for each of the proposed lots is 6.53 metres and therefore, each is deficient by 0.97 metres.

- [67] The first issue before the Board was to determine whether or not the Subdivision Authority correctly calculated the width of the two proposed lots.
- [68] Section 6.1 of the *Bylaw* defines Site Width as:
- The horizontal distance between the side boundaries of the Site measured at a distance from the Front Lot Line equal to the required Front Setback for the Zone.
- [69] Section 6.1 of the *Bylaw* defines Zone as:
- A specific group of listed Uses and Development Regulations which regulate the Use and development of land within specific geographic areas of the city. The Uses and Development Regulations are contained in Parts II and IV of this Bylaw, and may be subject to the regulations contained in Part I of this Bylaw, while the geographic areas to which they apply are shown on the Zoning Mpa, comprising Part III of the Bylaw.
- [70] The Appellant and the Subdivision Authority both agreed based on a review of the photographic evidence provided that there is a treed landscaped boulevard provided at the front of the subject Site.
- [71] Section 110.4(9)(a) of the *Bylaw* states that:
- The minimum Front Setback shall be 4.5 metres, except that the minimum Front Setback shall be 3.0 metres when a Treed Landscaped Boulevard is provided at the front of the Lot and vehicular access is from a Lane.
- [72] Based on this requirement, the proposed lots will be 6.53 metres in width and do not comply with the minimum required Site Width of 7.5 metres.
- [73] Discussion occurred regarding the requirements of the Mature Neighbourhood Overlay. The Mature Neighbourhood Overlay applies to all lots located within the RF1, RF2, RF3, RF4 and RF5 Zones.
- [74] The subject Site is zoned (RF1) Single Detached Residential Zone and the regulations contained in the Mature Neighbourhood Overlay also apply.
- [75] Under section 814.3(1) of the Mature Neighbourhood Overlay, the minimum required Front Setback is 9.68 metres which would result in a Site Width of 7.63 metres. The question for the Board to answer is at what point should the Site Width be measured? Should it be measured at 3.0 metres as required in the RF1 Zone or at 9.68 metres as required by the Mature Neighbourhood Overlay?
- [76] The Board agrees with the method used by the Subdivision Authority to determine the minimum required Site Width based on the definition of Site Width being “the horizontal

distance between the side boundaries of the Site measured at a distance from the Front Lot Line equal to the required Front Setback for the Zone”. The definition specifically reinforces using the Setback requirements of the Zone whereas the Mature Neighbourhood Overlay applies to several different Zones. If it was Council’s intent that the definition be Site specific and include both the Setback for the Zone and the Setback for the specific Site pursuant to the requirements of an Overlay, it would have been drafted that way by stating that the Site Width should be measured at the point of the required Setback for this particular Site.

[77] The definition could have also been drafted to state that Site Width should be measured either by an applicable Overlay or the underlying Zone whichever was greater. Instead, the definition merely includes the word “Zone”. As cited above, a Zone is “a specific group of listed Uses and Development Regulations which regulate the Use and development of land within specific geographic areas of the city”.

[78] The RF1 Zone regulations determine the Uses for this Site. Accordingly, the Board agrees with the method used by the Subdivision Authority to determine the width of this Site using the regulations contained in the underlying RF1 Zone and not the Mature Neighbourhood Overlay.

[79] Based on this finding, the proposed subdivision requires a variance to section 110.4(1)(b) of the *Bylaw*.

[80] Section 680(2)(f) of the *Municipal Government Act* states:

In determining an appeal, the board hearing the appeal may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this part or the regulations or bylaws under this Part.

[81] Section 654(2) of the *Municipal Government Act* states:

A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

(a) the proposed subdivision would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

[82] Therefore, the Board grants the required variance for the following reasons:

- a) The subject site is located in the Mature Neighbourhood Overlay and pursuant to those regulations, the principal building will be required to be Setback significantly further than the minimum required 3.0-metre Front Setback requirement in the RF1 Zone. The practical effect is that the principal building will be constructed at the widest part of the lot which is 7.63 metres.
- b) It will be possible to build a Single Detached House on both of the newly created lots that complies with all of the development regulations with the exception of the minimum required Site Width.
- c) The Board notes that the subject Site is an irregular shape and therefore, pursuant to section 11.4(1) of the *Bylaw*, the Development Authority is able to grant a variance to the Site Width. Section 11.4(1) states:

In approving a Development Permit Application pursuant to Section 11.3, the Development Officer shall adhere to the following:

- a) a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation or land or a building, which are not generally common to other land in the same Zone;
 - b) except as otherwise provided in this Bylaw, there shall be no variance from maximum Height, Floor Area Ratio or density regulations;
 - c) on rectangular shaped Lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1, RF2, RF3 and RF4 Zones for all Sites which received subdivision approval after June 12, 2017; and
 - d) there shall be no variance to the General Purpose of the appropriate Zone or Overlay.
- d) The Board notes that a large number of smaller rectangular lots in this neighbourhood have already been subdivided because they are not subject to the same Site Width requirements as the subject, pie-shaped lot.
 - e) The proposed subdivision application was circulated to EPCOR, Transportation Services and other City departments that have all provided feedback indicating that the proposed subdivision will not affect the existing infrastructure.
 - f) The Board acknowledges that lot splitting can increase demands on street parking, but finds, based on the evidence provided, that these lots will be large enough to accommodate sufficient on-site parking off the rear lane.

[83] For all of these reasons, the Board finds that granting the required variance in Site Width will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[84] Therefore, the appeal is allowed.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. R. Handa; Mr. C. Buyze; Ms. D. Kronewitt Martin; Ms. S. LaPerle

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 Subdivision application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Subdivision Authority, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.