

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2156257 Alberta Inc. o/a Select Cannabis Corp. v Development Authority of the City of Edmonton, 2019 ABESDAB 10192

Date: November 13, 2019  
Project Number: 340006601-001  
File Number: SDAB-D-19-192

Between:

2156257 Alberta Inc. o/a Select Cannabis Corp.

and

The City of Edmonton, Development Authority

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### Board Members

Ian Wachowicz  
Kathy Cherniawsky  
Don Fleming  
Alex Nagy  
Art Peterson

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### DECISION

[1] On October 31, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 7, 2019 for an application by 2156257 Alberta Inc. o/a Select Cannabis Corp. The appeal concerned the decision of the Development Authority, issued on October 3, 2019, to refuse the following development:

**Change the Use from a General Retail store to a Cannabis Retail sales store and to construct interior alterations.**

[2] The subject property is on Plan 965AH Blk 61 Lots 19-23, located at 10104 - 149 Street NW, within the (CB1) Low Intensity Business Zone. The Main Streets Overlay and 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:
- 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 submissions.

### **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 Appellant, 2156257 Alberta Inc. o/a Select Cannabis Corporation*

- [7] E. Parker of Parlee McLaws LLP appeared to represent the Appellant. His clients, T. Nguyen and A. Nguyen were also present.
- [8] The development permit was refused because the proposed Cannabis Retail Sales does not comply with the minimum 100-metre setback requirement from public lands zoned (A) Metropolitan Recreation Zone or (AP) Public Parks Zone per section 70.2(b) of the *Edmonton Zoning Bylaw*. The proposed setbacks are 60 metres from an (A) Zone and 96 metres from an (AP) Zone and the proposed Cannabis Retail Sales is therefore deficient by 40 metres and 4 metres, respectively.
- [9] Mr. Parker's clients will operate the proposed Cannabis Retail Sales and bring extensive combined knowledge and experience in both the retail and business fields, including the cannabis industry.
- [10] Several interior renderings of the proposed Cannabis Retail Sales were shown to illustrate that the premises will be visually appealing and that all required standards will be met.
- [11] The proposed Cannabis Retail Sales will benefit the local community and the neighbouring tenants are supportive; they believe the proposed development will bring more customers to the area.
- [12] All other municipal, federal and provincial legislation as well as the requirements of Alberta Gaming, Liquor & Cannabis will be complied with.

- [13] The Board has the authority to grant the required variances per section 687(3)(d) of the *Municipal Government Act* because the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The proposed development conforms with the use prescribed for the land or building in the *Edmonton Zoning Bylaw*.
- [14] As per *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295, a presumption of harm cannot be inferred from non-compliance with the *Edmonton Zoning Bylaw*. No evidence of any harm has been provided in this appeal. In fact, the surrounding landowners are supportive of the proposed development.
- [15] A series of photographs was shown to provide context to the proposed site and surrounding area and illustrate why it is appropriate to grant the required variances:
- a) The distance from the edge of the proposed Cannabis Retail Sales store to the closest point of the MacKinnon Ravine (zoned A – Metropolitan Recreation Zone) is 105 metres and the actual walking distance is 150 metres. A pedestrian would have to walk 340 metres and cross 14 lanes of major arterial traffic at a controlled intersection to access the entrance to the mixed use path providing access to the river valley.
  - b) The closest point of MacKinnon Ravine to the Cannabis Retail Sales is a very steep slope with no useable public land or playgrounds.
  - c) A pedestrian would have to walk 120 metres and cross 4 lanes of traffic on 102 Avenue to get to the other conflicting site to the north (AP Zone). There are no playing fields, playgrounds, sitting areas, or picnic areas for public use close to the proposed Cannabis Retail Sales in this AP Zone and there is a raised berm and a line of trees along the west side of this 45-metre wide park.
  - d) The proposed Cannabis Retail Sales is located in a commercial plaza and is not facing any residential buildings. There are no trees or other security concerns in front of the store.

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

- [16] Prior to answering questions from the Board Mr. Chow drew the Appellant's attention to section 70.6 of the *Edmonton Zoning Bylaw* which outlines design requirements for Cannabis Retail Sales.
- [17] Mr. Chow confirmed it is the City's general practice to use the site-to-site measurement for most separation distances. One exception is for Liquor Stores where the separation distances are measured from building wall to building wall.
- [18] The Development Officer has no authority to reduce the required separation distances.

- [19] Mr. Chow is not aware of any problems related to the proximity of existing Cannabis Retail Sales to lands zoned A or AP within the City.
- [20] No complaints have been received from any neighbouring retail businesses regarding this proposed development.

*iii) Rebuttal of the Appellant*

- [21] The Appellants confirmed they have no objections to the Development Officer's recommended conditions should this development be approved.

**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. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5m (14.76 ft.) setback. (Reference Section 340.4(3) & (5)).
  2. 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).
  3. Signs require separate Development Applications.
  4. The design requirements for Cannabis Retail Sales per section 70.6 shall be met.
- [23] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum required separation distance for any Site containing Cannabis Retail Sales from public lands zoned (A - Metropolitan Recreation Zone) of 100 metres per section 70.2(b) is varied to allow a deficiency of 40 metres, thereby decreasing the minimum allowed to 60 metres.
  2. The minimum required separation distance for any Site containing Cannabis Retail Sales from public lands zoned (AP - Public Parks Zone) of 100 metres per section 70.2(b) is varied to allow a deficiency of 4 metres, thereby decreasing the minimum allowed to 96 metres.

**Reasons for Decision**

- [24] Cannabis Retail Sales is a Permitted Use in the (CB1) Low Intensity Business Zone.
- [25] The Development Authority refused a Development Permit because the proposed Cannabis Retail Sales Use is 96 metres away from an (AP) Public Parks Zone to the north and is 60 metres away from an (A) Metropolitan Recreation Zone to the southeast, when section 70 of the *Edmonton Zoning Bylaw* mandates that Cannabis Retail Sales be at least 100 metres from either Site zoned (A) and (AP).
- [26] The Board has granted variances to both of those separation distances for the following reasons:
- a) With respect to the proximity to the (AP) Public Parks Zone to the north, the Board notes that the deficiency is only a 4-metre deficiency which the Board finds to be close to a *de minimis* (minimal) variance.
  - b) With respect to the more significant variance requested, the Board notes that this variance is not to an (AP) Public Parks Zone but to an (A) Metropolitan Recreation Zone. The significance of this is that the portion of MacKinnon Ravine that is at issue in this (A) Zone is not an actively used public park, but is a steeply sloped ravine that is wooded and has no structural recreational amenities. In addition, the closest access point to the MacKinnon Ravine is 340 metres away from the proposed location.
  - c) While the proposed Cannabis Retail Sales Use is only 60 metres away as the “crow flies” from MacKinnon Ravine, the Board notes that it is across both 149 Street and Stony Plain Road, which are two significant arterial roads. This forms a significant barrier between MacKinnon Ravine and the proposed Site. A pedestrian traversing from the edge of MacKinnon Ravine would have to cross 14 lanes of traffic and travel 150 metres before reaching the proposed location based on evidence before the Board.
  - d) The proposed bay of the building in which the Cannabis Retail Sales will be located is in fact over 100 metres away, even as the “crow flies”, from MacKinnon Ravine. The 60-metre distance is calculated from the edge of the Site in which the proposed Use is located. This is a large Site that encompasses several retail Uses, most of which are closer to MacKinnon Ravine than the proposed Cannabis Retail Sales Use.
- [27] 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.

[28] 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.

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board

CC: Parlee McLaws LLP – E. Parker  
Development & Zoning Services – S. Chow / I. Welch  
City of Edmonton Law Branch – M. Gunther

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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