SUBDIVISION

AND

DEVELOPMENT APPEAL BOARD

AGENDA

Tuesday, 9:00 A.M. October 5, 2021

| Ι | 9:00 A.M. | SDAB-D-21-163 | |
|---|------------|---------------|---|
| | | | Change the Use from a General Retail Store to |
| | | | Liquor Store, and construct interior alterations |
| | | | 14808 - Stony Plain Road NW |
| | | | Project No.: 401717125-002 |
| Π | 11:00 A.M. | SDAB-D-21-164 | |
| | | | To construct exterior alterations to a Single Detached House (reduce window size (84" x 54" on main floor right elevation, add a Garage door to the front attached Garage (facing the street), and construct an additional driveway access (5.60 x 3.96m)) |
| | | | 4137 - Whispering River Drive NW Project No.: 391642887-002 |

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

ITEM I: 9:00 A.M.

| AN APPEAL FROM THE DECIS | ION OF THE DEVELOPMENT OFFICER |
|---|---|
| APPELLANT: | |
| APPLICATION NO.: | 401717125-002 |
| APPLICATION TO: | Change the Use from a General Retail Store to Liquor Store, and construct interior alterations |
| DECISION OF THE | |
| DEVELOPMENT AUTHORITY: | Refused |
| DECISION DATE: | August 12, 2021 |
| DATE OF APPEAL: | September 7, 2021 |
| MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: | 14808 - Stony Plain Road NW |
| LEGAL DESCRIPTION: | Plan 7601AE Blk 12 Lots 37-39 |
| ZONE: | (CSC) Shopping Centre Zone |
| OVERLAY: | Main Streets Overlay |
| STATUTORY PLAN: | N/A |
| | |

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

Please accept this report as our reason for appeal for Project #401717125-002. This appeal seeks to overturn the Development Officer's decision to refuse issuing a Development Permit to Change the Use from a General Retail Store to Liquor Store, and construct interior alterations for a property located at 14808 Stony Plain Road. Eins

Development Consulting Ltd. has been retained by D&R construction. to represent them on this appeal application.

Summary

Our rationale for challenging the decision of the Development Officer is three-fold:

- First, this portion of the MacKinnon Ravine Park is not accessible from Stony Plain Road, nor from the site in question. The only access to the Park is by navigating across a footbridge to gain access to the entry path to the Park, which results in a functional travel distance of more than 100m as required. The steep slope and dense vegetation prevent any access to this portion of the Ravine from Stony Plain Road;
- 2. Second, Stony Plain Road is a major thoroughfare that functions to separate the subject site from the edge of MacKinnon Ravine Park on the south side of the street. The only safe way to cross Stony Plain Road from the subject site to the south side of the street is to utilize a crosswalk to the east of the subject site. As a result, the practical separation between the subject site and a lookout point, itself a passive recreation amenity, is more than 180m; and 3.
- 3. Lastly, the proposed location for the Liquor Store meets all other separation requirements per the City of Edmonton's Zoning Bylaw 12800. There are no schools, public libraries, health facilities or other Liquor Stores within close proximity to this location. It is proposed along a major thoroughfare, and is located within a major commercial node, making it an ideal location for a Liquor Store.

Conclusion

In conclusion, we feel that the Development Officer's decision to refuse the Development Permit for this proposed use should be overturned. We look forward to making further submissions and an oral presentation to support this case.

General Matters

Appeal Information:

The Municipal Government Act, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

•••

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

•••

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
 - •••
 - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
 - (d) 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.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 320.2(13), Liquor Stores, on a Site of 2 ha or larger, is a Permitted Use in the (CSC) Shopping Centre Zone.

Under section 320.3(9), Liquor Stores, on a Site of less than <u>2 ha</u> is a Discretionary Use in the (CSC) Shopping Centre Zone.

Under section 7.4(30) **Liquor Stores** means "development used for the retail sale of any and all types of alcoholic beverages to the public for off-site consumption. This Use may include retail sales of related products such as soft drinks and snack foods."

Section 320.1 states that the General Purpose of the (CSC) Shopping Centre Zone is:

to provide for larger shopping centre developments intended to serve a community or regional trade area. Residential, office, entertainment and cultural uses may also be included within such shopping complexes.

Section 819.1 states that the General Purpose of the Main Streets 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.

Section 85 - Liquor Stores

- 1. Any Liquor Store shall not be located less than 500 m from any other Liquor Store.
- 2. Notwithstanding subsection 85(1), a Liquor Store may be located less than 500 m from any other Liquor Store if located:
 - a. outside the boundary shown in Appendix 1 to Section 85, provided:
 - i. the Liquor Stores are located on separate Sites, and
 - ii. at least one Liquor Store is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.
- 3. For the purposes of Section 85, the 500 m separation distance shall be measured from the closest point of the Liquor Store to the closest point of any other approved Liquor Store.
- 4. Any Site containing a Liquor Store shall not be located less than 100 m from any Site being used for community or recreation activities, public or private education, or public lands at the time of the application for the Development Permit for the Liquor Store. Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, are exempt from this restriction. For the purposes of this subsection only:

- a. the 100 m separation distance shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;
- b. the term "community or recreation activities" is limited to Community Recreation Services, as defined in subsection 7.8(1) of this Bylaw, which includes community league buildings and facilities, and children's playgrounds and play areas. This term does not include arenas or other public assembly Uses, Child Care Services, Public Libraries and Cultural Exhibits, or Religious Assembly;
- c. the term "public or private education facilities" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools; and

d. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.

- 5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 85(4).
- 6. Notwithstanding Section 11 of this Bylaw, a Development Officer shall only grant a variance to subsection 85(1) or subsection 85(2) as outlined in subsections 85(7), 85(8) and 85(9).
- 7. When the Development Officer receives an application for a Development Permit that is for the purpose of accommodating the temporary relocation of an approved Liquor Store within 500 m of its original location, a variance to subsection 85(1) or subsection 85(2) may be granted where:
 - a. the application for the Development Permit is for a Temporary Development, in order to limit the introduction of an additional Liquor Store within 500 m of the original approved Development Permit;
 - b. the temporary location for any Liquor Store is not within 500 m of any legally conforming Liquor Store; and
 - c. the application for a Development Permit will not result in a total Floor Area for a Liquor Store that is 10.0% greater than the Floor Area of the existing approved Liquor Store, to a maximum increase of 50 m².
- 8. When a Development Officer receives an application for a Development Permit that is for the purpose of accommodating the reversion of an existing approved Liquor Store back to its original location on a Site, a variance of subsection 85(1) or subsection 85(2) may only be granted where the application for the reversion is submitted to the Development Officer within 5 years of the date of vacating the original location and the application will not

result in a total Floor Area that is greater than the original approved Liquor Store.

- 9. The issuance of a Development Permit which contains a variance pursuant to subsection 85(7) shall be issued as a Temporary Development for a duration of up to 5 years or less, to be determined by the Development Officer.
- 10. The Development Officer may require lighting, signage or screening measures that ensure the proposed development is compatible with adjacent or nearby Residential Uses or Commercial Uses.
- 11. Liquor Stores shall include the following to allow for natural surveillance to promote safe surroundings:
 - a. Customer access is oriented to:
 - i. a public or internal roadway, other than a Lane;
 - ii. a shopping centre parking lot in front of the store; or
 - iii. a mall access that allows visibility from the interior of the mall into the store.
 - b. Premises located at ground level shall include:
 - i. Ample transparency to maintain sight lines into and out of the premises. To ensure transparency and sight lines are maintained:
 - 1. Not more than 10% of the windows may be covered by Signs, the remainder shall be clear, untinted, and free from obstruction.
 - ii. Outdoor lighting is required to provide a well-lit environment for pedestrians entering and exiting the premises and to illuminate the property. The Development Officer shall require the applicant to provide a plan showing the location and details of perimeter lighting to ensure adequate lighting.
 - iii. Landscaping shall be located such that it does not obstruct sight lines into the premises.

Development Officer's Determination

1. Section 85.4: Any Site containing a Liquor Store shall not be located less than 100 m from any Site being used for public lands at the time of the application for the Development Permit for the Liquor Store.

2. Section 85.4.d: The term "public lands" is limited to Sites zoned AP, and Sites zoned A.

Proposed: A public land Site (MacKinnon Ravine Park, Zoned A) is identified less than 100 m from the Site of proposed Liquor Store, contrary to Section 85.4.

Required separation distance: 100 m Proposed separation distance: 30 m Deficient by: 70 m

Note:

Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 85(4). (Reference Section 85.5)

[unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

| | | | | Project Number: 401717 Application Date: | 7125-002 |
|--|---|---------------------|--|---|------------|
| Edmonton | | nulication | n for | Printed: August 12, 2021 Page: | |
| | 1 | Application | 101 | rage. | |
| | Majo | r Developi | nent Permit | | |
| This document is a Develop | ment Permit Decision for th | e development app | lication described below | N. | |
| Applicant | | 1 | Property Address(es) a 14808 - STONY PL | and Legal Description(s) AIN ROAD NW | |
| | | | | Blk 12 Lots 37-39 | |
| | | 5 | pecific Address(es) | | |
| | | | | NY PLAIN ROAD NW | |
| | | E | | NY PLAIN ROAD NW | |
| | | | 2 2 C | NY PLAIN ROAD NW | |
| Scope of Application | | | | | |
| To Change the Use from | m a General Retail Store to | Liquor Store, and | construct interior alterat | tions. | |
| Permit Details | | | | | |
| Characteria Characteria | | 1.0 | | | |
| Class of Permit: Class B Gross Floor Area (sq.m.): | | | nstact Person: et Grading Needed?: N | | |
| New Sewer Service Require | £ | | unberOfMainFloorDwelling | r. | |
| Site Area (sq. m.): | | St | at. Plan Overlay/Annex Area | (none) | |
| | ny Site containing a Liquor lication for the Developme | | | from any Site being used for publ | ic lands a |
| 2. Section 85.4.d: | The term "public lands" is l | imited to Sites zon | ed AP, and Sites zoned. | A. | |
| Proposed: A public Store, contrary to | | vine Park, Zoned A |) is identified less than | 100 m from the Site of proposed I | liquor |
| Required separation Proposed separation Deficient by: 70 m | m distance: 30 m | | | | |
| Note: Notwithstanding S 85.5) | ection 11 of this Bylaw, a I | Development Office | er shall not grant a varis | nce to subsection 85(4). (Referen | ce Section |
| which the decision | the right of appeal to the Si is made as outlined in Cha ugh 689 of the Municipal (| pter M-26, | elopment Appeal Board | l (SDAB) within 21 days after the | date on |
| Fees | | | | | |
| | Fee Amount | Amount Paid | Receipt # | Date Paid | |
| Major Dev. Application Fee | \$528.00 | \$528.00 | 128737091600001 | Jul 22, 2021 | |
| | | THIS IS NOT A | PERMIT | | |
| | | | | | |

| Fees Eve Amount Anount Paid Receipt # Date Paid Tends for Purut: 3538.00 5538.00 5538.00 | Edmonton | Application for Major Development Permit | | | Project Number: 401717125-002 Application Date: JUL 07, 2021 Printed: August 12, 2021 at 12:44 PM Page: 2 of 2 | | |
|--|-------------------|---|------------------|-----------|---|--|--|
| | Total GST Amount: | \$0.00 | | Receipt # | Date Paid | | |
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| THIS IS NOT A PERMIT | | | THIS IS NOT A PE | RMIT | | | |





ITEM II: 11:00 A.M.

| AN APPEAL FROM THE DECIS | ION OF THE DEVELOPMENT OFFICER |
|---|---|
| APPELLANT: | |
| APPLICATION NO.: | 391642887-002 |
| APPLICATION TO: | To construct exterior alterations to a Single Detached House (reduce window size (84" x 54") on main floor right elevation, add a Garage door to the front attached Garage (facing the street), and construct an additional driveway access (5.6m x 3.96m)) |
| DECISION OF THE DEVELOPMENT AUTHORITY: | Refused |
| DECISION DATE: | August 27, 2021 |
| DATE OF APPEAL: | September 7, 2021 |
| MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: | 4137 - Whispering River Drive NW |
| LEGAL DESCRIPTION: | Plan 1125154 Blk 1 Lot 30 |
| ZONE: | (RF1) Single Detached Residential Zone |
| OVERLAY: | N/A |
| STATUTORY PLAN(S): | Windermere Area Structure Plan Windermere Neighbourhood Structure Plan |

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

We would like to appeal the decision of the development officers refusal of our development application (391642887-003) for a second driveway

on a house we are currently building for James & Christine Vollmer. We currently have a side drive triple garage designed and would like access to the right side of the garage from the front as well. Our clients have a large truck and the turning radius for our side driveway is not easily accessible with their truck.

The amount of concrete at the boulevard will be equal to or less than what would be used for a front drive triple garage. There will be landscaping to the sides and we will have a landscape buffer between the two driveways. There are no boulevard trees in the path of the proposed second driveway. We could pour the driveway in the center all the way across so it would only be one driveway that would access both doors but this would be less appealing to the streetscape than having two driveways.

There are other houses in the same neighborhood with separated double driveways as well as neighborhoods close by. There are also other houses along the street that have more driveway at the boulevard with one triple drive driveway than this house will have with the two proposed driveways.

General Matters

Appeal Information:

The Municipal Government Act, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

•••

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

- • •
- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

. . .

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) 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.

General Provisions from the Edmonton Zoning Bylaw:

Under section 110.2(7), Single Detached Housing is a Permitted Use in the (RF1) Single Detached Residential Zone.

Under section 6.1, **Driveway** means "an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area and does not include a Walkway.

Under section 6.1, **Garage** means "an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport."

Under section 6.1, Front Yard means:

the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.



Section 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is "to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing."

Vehicle Parking Design for Low-density Residential

Section 54.3(3) states "The Front Yard of any ground level Dwelling that is not part of a Multi-Unit Project Development, or in the case of a corner Site, either the Front Yard or the flanking Side Yard, may include a maximum of one Driveway. [...]"

Development Officer's Determination

1) The Front Yard of any ground level Dwelling that is not part of a Multi-Unit Project Development, or in the case of a corner Site, either the Front Yard or the flanking Side Yard, may include a maximum of one Driveway. (Section 54.3.3).

Proposed: The lot has two Driveways instead of one.

[unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

| Edmonton | I | Applicatio | n for | Project Numb Application Date Printed: Page: | er: 391642887-002 APR 08, 2021 August 27, 2021 at 4:43 PM 1 of 1 | | | | |
|---|--|-------------|---|---|---|--|--|--|--|
| Alterations Permit | | | | | | | | | |
| This document is a Development Permit Decision for the development application described below. | | | | | | | | | |
| Applicant | | 1 | • • | and Legal Descriptio | | | | | |
| | | | 4137 - WHISPERING RIVER DRIVE NW Plan 1125154 Blk 1 Lot 30 | | | | | | |
| | | | 100112/17 | - Dia 1 200 30 | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| Scope of Application | | | | | | | | | |
| Garage door to the front attache | To construct exterior alterations to a Single Detached House (reduce window size (84" x 54") on main floor right elevation, add a Garage door to the front attached Garage (facing the street), and construct an additional driveway access (5.6m x 3.96m)). | | | | | | | | |
| Permit Details | | | | | | | | | |
| Class Of Permit: | | s | te Area (sq. m.): 1138.5 | | | | | | |
| Stat. Plan Overlay/Annex Area: (none |) | | | | | | | | |
| Issue Date: Aug 27, 2021 Development Authority: WINGET, MARK Reason for Refusal 1) The Front Yard of any ground level Dwelling that is not part of a Multi-Unit Project Development, or in the case of a corner Site, either the Front Yard or the flanking Side Yard, may include a maximum of one Driveway. (Section 54.3.3). Proposed: The lot has two Driveways instead of one. Rights of Appeal The Applicant has the right of appeal to the Subdivision and Development Appeal Board (SDAB) within 21 days after the date on which the decision is made as outlined in Chapter M-26, Section 683 through 689 of the Municipal Government Act. Building Permit Decision No decision has yet been made. | | | | | | | | | |
| Fees | Fee Amount | Amount Paid | Receipt # | Date Paid | | | | | |
| Building Permit Fee (Construction | \$112.00 | \$112.00 | 082290266042001 | Apr 09, 2021 | | | | | |
| Value) Safety Codes Fee | \$4.50 | \$4.50 | 082290266042001 | Apr 09, 2021 | | | | | |
| Development Application Fee | \$176.00 | \$176.00 | 082290266042001 | Apr 09, 2021 | | | | | |
| Total GST Amount: Totals for Permit: | \$292.50 | \$292.50 | | | | | | | |
| THIS IS NOT A PERMIT | | | | | | | | | |
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File: SDAB-D-21-164