



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 18, 2018
Project Number: 285957792-001
File Number: SDAB-D-18-142

Notice of Decision

- [1] On September 12, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 20, 2018**. The appeal concerned the decision of the Development Authority, issued on August 7, 2018 to refuse the following development:

To change the Use from a Vehicle Sales and Repair shop to a Cannabis Retail Store.

- [2] The subject property is on Plan I Blk 69 Lots 6-11, located at 10130 - 82 Avenue NW, within the (CB2) General Business Zone. The Main Streets Overlay and Strathcona 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 submission; and
 - The Appellant’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Community Relations document submitted by the Appellant;
 - Exhibit B – City of Edmonton SLIM map of the subject Site submitted by the Appellant;
 - Exhibit C – City of Edmonton SLIM map of the subject Site identifying the four bays of the building submitted by the Appellant; and
 - Exhibit D – Web Page of the Learning Store.

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 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Ms. J. Agrios, Legal Counsel and Mr. C. Horwitz, business owner:*

- [8] Mr. Horwitz is Vice-President of Spirit Leaf, an Alberta based company. The principals of the company are long standing members of the business community.
- [9] A conceptual photograph of the retail space was submitted, marked *Exhibit A*.
- [10] The subject site is located on the north side of Whyte Avenue, east of 101 Street in a CB2 General Business Zone. Cannabis Retail Sales is a permitted use in this zone. Photographs were referenced to illustrate that the subject site is surrounded by a variety of retail and food and beverage type uses in a very commercial area.
- [11] The proposed development is located in a bay on the west side of a large building that contains Whyte Avenue Goodwill Thrift Store and AdaptAbilities. The subject entrance is located on the west side of the building and does not front onto Whyte Avenue.
- [12] The development permit was refused because the subject site does not comply with the minimum setback requirement from a site being used for “public or private education”. The required separation distance for Cannabis Retail Sales from a site being used for public or private education is 200 metres and, in this case, the proposed separation distance is 194 metres, leaving a deficiency of six metres.
- [13] In this case, the public or private education use referenced by the Development Officer is the “Learning Store”, located at 10007 – 82 Avenue. The development permit in place for the Learning Store is for a “Professional, Financial and Office Support Services” use which is a permitted use in the CB2 Zone. Private and Public Education Services uses are their own use classes and neither of these are included as either a permitted or a discretionary use in the CB2 Zone.
- [14] In approving a development permit for the Learning Store as a Professional, Financial and Office Support Services use, the Development Officer who issued the permit

- determined that the Learning Store is not used for either public or private education. If the Learning Store was considered to be a public or private education use, it would not fall within either the permitted or discretionary uses for the CB2 Zone, and the Development Officer would not have had jurisdiction to approve the development permit.
- [15] Therefore, the refusal of this development permit application on the basis that it is within 200 metres of a “public or private education” use, pursuant to section 70.2 is inconsistent with the Development Officer granting a development permit for the Learning Store for “Professional, Financial and Office Support Services”, which determines that the use of the Learning Store site does not constitute a public or private education use.
- [16] An aerial photograph was referenced to illustrate that previous Development Officers did not appear to apply the required separation distances found in the *Edmonton Zoning Bylaw* between either an alcohol sales or a body rub centre which are both located within 100 metres of the Learning Store. In permitting those uses to be located within the vicinity of the Learning Store, but refusing the development permit application to operate a Cannabis Retail Sales business, the Development Authority has displayed inconsistency in classifying the Learning Store.
- [17] Having previously determined that the Learning Store is not used for public or private education, the Development Authority is estopped from now taking the inconsistent position that the Learning Store is a public or private education use for the purposes of denying this development permit application.
- [18] Two Court of Appeal decisions were referenced in support of this position. In *Yellowhead Engine Builders Ltd. v Edmonton (City)*, 2005 ABCA 429, the Court determined that the Subdivision and Development Appeal Board was estopped from changing its decision regarding a non-conforming use. In *Sihota v Edmonton (City)*, 2013 ABCA 43, the Court of Appeal found that once a use classification is determined, even if it was wrong, everyone is bound to comply with that use classification.
- [19] Cannabis Retail Sales is a permitted use in the CB2 Zone. If the Learning Store is really a private or public education use, this use is neither permitted nor discretionary in the CB2 Zone. The result is that this use is preventing a development permit approval for the proposed use that is a permitted use in this zone.
- [20] In the alternative, if the Board finds that the Learning Store is “private or public education” and the separation distance requirement applies, it is appropriate to grant the required variance of 6 metres for a very small portion of the southeast corner of the building.
- [21] The separation distance of 194 metres as calculated by the Development Officer is accepted and a variance of 6 metres is required.

- [22] The entrance of the proposed development is located on the west side of the building and does not front onto Whyte Avenue and is more than 200 metres away from the entrance of the Learning Store.
- [23] A map obtained from the City website, marked *Exhibit B*, was referenced to illustrate that only a small portion of the subject site does not comply with the separation distance requirements.
- [24] There are three lots located across the roadway, on the south side of Whyte Avenue, that are located closer to the Learning Store than the site of the proposed development and would be granted a development permit as a right and variances would not be required.
- [25] Section 642(1) of the *Municipal Government Act* requires the development authority to issue a development permit with or without conditions as provided for in the land use bylaw if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1. Section 685(3) of the *Municipal Government Act* states that no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).
- [26] Cannabis Retail Sales is a permitted use in a commercial zone. There are bars, nightclubs, alcohol sales, body rub centres, and secondhand stores located closer to the Learning Store than the proposed development.
- [27] This area of Whyte Avenue is currently in transition. There was no opposition to the proposed development, and the Cannabis Retail Sales business will be an attractive addition to this area and it is therefore appropriate to grant the required variance if estoppel does not apply.
- [28] Even if estoppel does not apply in this instance the issue of consistency in the decision making process should be considered.
- [29] Mr. Horwitz used a City map marked *Exhibit C* to illustrate how the subject site has been developed into four different bays to house the Goodwill store, AdaptAbilities, Spirit Leaf and one additional business. The Goodwill store is located in the portion of the site that does not comply with the separation distance requirement. It was his assumption when they applied for the development permit that the separation distance would be measured for the outside wall of their bay to the Learning Store.
- [30] Ms. Agrios and Mr. Horwitz provided the following responses to questions from the Board:
- a) The building has not been condominiumized.
 - b) An aerial map was used to identify the location of the other alcohol sales uses.

- c) Information sessions have been held with neighbouring business owners who are all very supportive of the proposed development as is the landlord. No one has expressed any opposition to the proposed development.
- d) The web page for the Learning Store was accessed with the agreement of all parties, marked *Exhibit D*. Ms. Agrios confirmed that the description of the services offered was consistent with her understanding of the programs being provided.

ii) *Position of the Development Officers, Mr. I. Welch and Mr. S. Chow:*

- [31] The Learning Store was found to be a public or private education service based on section 1(1)(y) of the *School Act* which defines a school as “a structured learning environment through which an education program is offered to a student by (i) a board, (ii) an operator of a private school, (iii) an early childhood services program private operator, (iv) a parent giving a home education program, or (v) the Minister”.
- [32] Section 105(3)(b) of the *Gaming, Liquor and Cannabis Regulation* states that “a premises described in a cannabis licence may not have any part of an exterior wall that is located within 100 metres of a building containing a school or a boundary of a parcel of land on which the building is located, [...]”
- [33] Mr. Chow and Mr. Welch provided the following information in response to questions from the Board:
- a) No information could be provided regarding the approval of the Learning Store as a Professional, Financial and Office Support Services use in 2001 or the fact that there are several alcohol sales and a body rub centre located within the minimum required 100 metre separation distance established in the *Edmonton Zoning Bylaw*.
 - b) A Cannabis Retail Sales use also requires a licence from the Alberta Gaming and Liquor Commission and has to comply with additional provincial regulations.
 - c) If the Learning Store originally made an application as a Professional, Financial and Office Support Service use and then changed the use to a school, they would be expected to make an application for a development permit for that change in use.

iii) *Rebuttal of the Appellant:*

- [34] The Learning Store may not fit the definition of a “school” in the *School Act* because the services offered are unstructured.
- [35] The mode of measurement for the required separation distance used in the provincial regulation is different from the mode of measurement used in section 70 of the *Edmonton Zoning Bylaw*.

Decision

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

1. The Cannabis Retail Sales shall not commence operations until such time as the non-medical sale and distribution of Cannabis is authorized by federal and provincial law;
2. The Cannabis Retail Sales must commence operations within nine (9) months of the date of issuance of this Development Permit;
3. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5 metres (14.76 feet) setback. (Reference Section 340.4(3) & (5));
4. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, member, residents or visitors in connection with the building or Use for which the parking and loading facilities are provide, 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).

ADVISEMENTS:

- a. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-44205311) for further information.
- b. Signs require separate Development Applications.
- c. A building permit is required for any construction or change in Use of a building. For a building permit, and prior to the plans examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre (780-442-5311) for further information.
- d. Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw* 12800 as amended.

Reasons for Decision

[37] Cannabis Retail Sales is a Permitted Use in the (CB2) General Business Zone, pursuant to section 340.2(6) of the *Edmonton Zoning Bylaw* (the *Bylaw*).

[38] Section 70.2(a) of the *Bylaw* states that:

Any Site containing a Cannabis Retail Sales shall not be located less than 200 m from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the cannabis Retail Sales. For the purposes of this subsection only:

- a. The 200 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.

[39] The Development Authority refused the development permit application because it was determined that the subject Site of the proposed Cannabis Retail Sales is located 194 metres from a Site being used for public or private education.

[40] The Site being used for public or private education is the “Learning Store”. The Learning Store is an outreach program operated by Edmonton Public Schools. The Learning Store offers academic and non-academic high school courses at the Grade 10, 11, and 12 levels and is overseen by a Principal employed by Edmonton Public Schools.

[41] Section 7.8(11) of the *Bylaw* defines Public Education Services as:

Development which is publicly supported or subsidized involving public assembly for educational, training or instruction purposes, and includes the administration offices required for the provision of such services on the same Site. This Use includes public and separate schools, community colleges, universities, and technical and vocational schools, and their administrative offices. This Use does not include Private Education Services and Commercial Schools.

What is happening at the Learning Store certainly meets this definition.

[42] However, the development permit that was issued to Edmonton Public Schools to operate the Learning Store was a permit to operate a Professional, Financial and Office Support Services Use from this location, and not a Public Education Service. Section 7.4(44) of the *Bylaw* defines a Professional, Financial and Office Support Services Use as:

Development primarily used for the provision of professional, management, administrative, consulting, and financial services, but does not include Health Services or Government Services. Typical Uses include: the offices of lawyers, accountants, engineers, and architects; offices for real estate and insurance firms; clerical, secretarial, employment, telephone answering, and similar office support services; and banks, credit unions, loan offices and similar financial Uses.

[43] Public Education Services are neither a Permitted nor a Discretionary Use in the (CB2) General Business Zone, pursuant to section 340 of the *Bylaw* and according to the direction of City Council, should not be located in a (CB2) General Business Zone.

[44] The Board finds that it would be manifestly unfair to refuse a development permit application for a Permitted Use because it did not meet the minimum required separation distance from an existing development that looks like a public education service but is operating under a permit for a Professional, Financial and Office Support Services Use. If it is a public education use, then it is operating without a valid development permit and in a zone where that use is neither a Permitted nor Discretionary Use. The Board finds that the requirements of section 70.2(a) only apply insofar as the public education service in question has a valid development permit for that Use. The existence of the Learning Store does not trigger the application of section 70.2(a).

[45] The proposed development is a Permitted Use which complies with all of the development regulations pursuant to the *Bylaw*. Section 642(1) of the *Municipal Government Act* states:

When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

[46] Based on the above, the proposed development is approved as a Class A Permitted Use development.

[47] However, if the Board is wrong and the 200-metre separation distance does apply to the proposed development, the Board would, in the alternative, grant the required variance for the following reasons:

- a) This is a large Site that is physically divided, although not legally divided, and houses several different Uses. The proposed Cannabis Retail Sales is located on the western side of the Site and, in fact, is more than 200 metres away from the Learning Store.
- b) The entrance to the proposed Cannabis Retail Sales is on the west side of the building and does not face onto Whyte Avenue or the entrance of the Learning Store, which increases the physical separation between the two Sites and does not impact a common streetscape.
- c) The proposed Cannabis Retail Sales, which is focused on adult-only customers, is characteristic of other adult-only retail businesses in the area which include alcohol sales, a bar, a pawn shop, and a body rub centre, located between the Learning Store and the subject site along Whyte Avenue.
- d) There were no letters of objection received and no one appeared in opposition to the proposed development.

[48] For all of these reasons, the Board finds that under this alternative analysis the proposed development would 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 if a variance were granted under section 70.2(a) of the *Bylaw*.

[49] Therefore the appeal is allowed and the development is granted.

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

Board members in attendance: Ms. S. LaPerle, Mr. R. Handa, Mr. L. Pratt, Ms. S. McCartney

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.



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Date: September 18, 2018
Project Number: 285975363-001
File Number: SDAB-D-18-143

Notice of Decision

- [1] On September 12, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 20, 2018**. The appeal concerned the decision of the Development Authority, issued on August 1, 2018 to refuse the following development:

To operate a Cannabis Retail Sales.

- [2] The subject property is on Plan I Blk 62 Lots 21-27, located at 8155 - 105 Street NW, within the DC1 Direct Development Control Provision (Historical Commercial – Sub Area 1). The Strathcona Area Redevelopment Plan 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 Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submission including a PowerPoint presentation; and
 - One e-mail in support of the proposed development from an adjacent condominium owner.

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.

[7] The Chair referenced section 685(4)(b) of the *Municipal Government Act* which states:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Chair asked the Appellant to explain how the Development Authority failed to follow the directions of Council by refusing this development permit application.

Summary of Hearing

i) *Position of the Appellant, Mr. W. Stewart, representing Hiku Brands and his agent, Mr. C. Dulaba, Bel Jan Developments:*

[8] Mr. Dulaba is a Professional Planner with over 15 years of land use planning and real estate development experience who has been retained by the Applicant. Mr. Stewart is Vice-President of Communications and Public Affairs with Hiku Brands, the company associated with Tokyo Smoke, the retail cannabis operator in this application.

[9] Section 70.4 of the *Edmonton Zoning Bylaw* (the *Bylaw*) clearly states that the Development Authority cannot exercise variance power as it pertains to relaxing the 200-metre minimum separation distance between sensitive uses.

[10] The site is located on the southeast corner of Whyte Avenue and 105 Street. The proposed development is located in a commercial bay located on the eastern portion of a new mixed use six storey building, consisting of four storeys of residential above and two storeys of commercial.

[11] The site is zoned DC1 Direct Development Control Provision and Cannabis Retail Sales is a listed Use.

[12] The distance between the subject site and the boundary of the school site as calculated by the Development Authority in accordance with section 70.2(a) is 183 metres and requires a variance of 17 metres. It was his opinion that this variance is reasonable and should be supported by the Board.

[13] The City applies the separation distances as the "crow flies" and does not consider the true physical distance or separation of the sites created by buildings or other physical barriers. Aerial photographs were referenced to illustrate the approximate distances from a pedestrian perspective to walk between the sites. An aerial photograph illustrated the

distance required by the strict interpretation of the *Bylaw* regulations which is a separation distance of 183 metres from the nearest point of the school site.

A second aerial photograph illustrated the closest point between the two sites following the requirements of section 70.2(a), measured from legal lot line to legal lot line and the distance is approximately 202 metres as measured if you were to walk between the two sites.

A third aerial photograph illustrates the measurement from the legal lot line to the actual school and the closest point, the interior wall of the proposed Cannabis Retail Sales premises, which is approximately 250 metres.

The fourth aerial photograph illustrates the distance between the closest point of the school building wall and the closest point of the wall of the Cannabis Retail Sales premises, which is approximately 328 metres. In all of the alternative cases, the separation distance exceeds the minimum required distance of 200 metres.

- [14] Section 105(3)(b) of the *Gaming, Liquor and Cannabis Regulation* states that a premises described in a cannabis licence may not have any part of an exterior wall that is located within 100 metres of a building containing a school or a boundary of a parcel of land on which the building is located. It is clear from the referenced maps that this distance is exceeded.
- [15] As determined at a previous hearing, it was established that the mode of measurement pursuant to section 70.2 of the *Bylaw* is different from the provincial regulation. The separation distances established vary significantly.
- [16] The school site is located on a large lot, approximately 74,000 square feet in size that occupies half of a city block between 105 and 106 Streets. There is a lane along the southern boundary and the school building is located in the centre of the site.
- [17] The physical distance between the premises of the Cannabis Retail Sales and the school exceeds 200 metres. The hardship created by the size of the school site should be recognized by the Board.
- [18] Photographs were referenced to provide an eye level perspective to better illustrate the context between the two sites. The building in which the proposed use is located is characterized by commercial uses and is located on Whyte Avenue, which is a busy commercial corridor. There are many buildings and physical barriers located between the subject site and the school site. There is no visible connection between the school and the store front of the proposed Cannabis Retail Sales. The school is separated from the subject site by parking lots, public roadways and apartment buildings.

- [19] It was therefore his opinion that granting the required variance will not materially interfere with the enjoyment or use of the school given the physical distance between the use and the surrounding urban development nor would it have any negative impact on the operation of the school or its occupants given that one cannot see the proposed Cannabis Retail Sales from any part of the school building or the site.
- [20] Mr. Stewart provided an overview of Hiku Brands and the first class retail environment provided. The company has won Cannabis Brand of the Year and represents what cannabis retailers should be. The business is rooted in education; focused on experiential, design-first environments, along with substantial community involvement in education sessions, partnerships with health and wellness organizations, and a national footprint of experience and design which make the company a sought-after retailer.
- [21] Conceptual drawings were referenced to illustrate the front exterior of the proposed development as well as the layout of the store. Security measures and the method of purchasing product were reviewed.
- [22] Mr. Dulaba referenced the intent of the DC1 Direct Development Control Provision, which is to ensure the preservation of existing heritage buildings. The Strathcona Area Redevelopment Plan regulates the land uses and defines the area of the DC1. The intent of the DC1 is to preserve the 19 buildings that are on the Register of Historic Resources in Edmonton, six of which are designated by the province as they have significant architectural and historic value and to ensure that the future renovation and redevelopment of surrounding buildings result in developments that are compatible in architecture and built form with the historic buildings in the area.
- [23] It was his interpretation that this means the intent of the DC1 is to regulate and ensure that any type of redevelopment of the heritage buildings respects the architectural and historical value. Many of the development regulations address architecture, signs and massing. Council had the opportunity to add regulations regarding Cannabis Retail Sales, specifically separation distance when the Use was added.
- [24] The Development Authority applied the requirements of section 70.2 of the *Bylaw* as it pertains to the separation distance. It was his opinion that there is an argument to be made as to how the distances are measured in conjunction with provincial regulations.
- ii) Position of the Development Officer, Mr. I. Welch:*
- [25] He acknowledged that Hiku Brands is a high quality retailer but the Court of Appeal has determined that an appeal has to be considered based on the proposed use not the user.
- [26] Council has made it clear through the wording of section 70, that variances are not to be granted. It was his opinion that the direction of Council was followed by refusing this development permit application.

[27] Mr. Welch provided the following information in response to questions from the Board:

- a) He is satisfied that the separation distance measurement is accurate.
- b) Distance is measured, unless otherwise declared, as the “crow files”.
- c) The method of measuring distance established in the *Bylaw* can co-exist with provincial regulations.

iii) Rebuttal of the Appellant:

[28] Mr. Dulaba and Mr. Stewart had nothing further to add in rebuttal.

Decision

[29] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**.

Reasons for Decision

[30] Section 685(4)(b) of the *Municipal Government Act* states that:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[31] Cannabis Retail Sales is a listed Use in the DC1 (Historical Commercial) Direct Development Control Provision, pursuant to section 4(f).

[32] The proposed Cannabis Retail Sales does not comply with the minimum separation distance requirement from a school (Old Scona Academic High School), pursuant to section 70.2 of the *Edmonton Zoning Bylaw* (the *Bylaw*).

[33] This DC1 Direct Development Control Provision which is incorporated into the Strathcona Area Redevelopment Plan does not contain development regulations for Cannabis Retail Sales.

[34] Section 710.4(5) of the *Bylaw* states:

All regulations in this Bylaw shall apply to development in the Direct Development Control Provision, unless such regulations are specifically excluded or modified in a Direct Development Control Provision

Therefore, it is the direction of Council that the proposed Cannabis Retail Sales must comply with the development regulations contained in section 70 of the *Bylaw*.

[35] Section 70.2(a) of the *Bylaw* states that:

Any Site containing a Cannabis Retail Sales shall not be located less than 200 m from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the cannabis Retail Sales. For the purposes of this subsection only:

- b. The 200 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.

[36] Based on the evidence provided by the Development Officer and the Appellants, the distance from the closest point of the Site on which the proposed Cannabis Retail Sales Use is located and the Site of the school is 183 metres.

[37] Therefore, the requirements of section 70.2 of the *Bylaw* have not been met. Pursuant to section 710.4(5) of the *Bylaw*, the proposed development must comply with the requirements of section 70.2 because they have not been excluded or modified in the DC1 (Historical Commercial) Direct Development Control Provision.

Therefore, the Board finds that the Development Officer did follow the direction of Council by refusing this development permit application.

[38] Discussion occurred as to whether or not the Board could consider the distance between the two Sites measured along the roadway as a pedestrian would walk between the entrance of the school and the entrance of the proposed Cannabis Retail Sales. However, that method of calculating distance is not considered in the plain words of section 70.2(a) which states that “the 200 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.”

[39] There is no mention or reference to a pedestrian walk path in section 70.2 of the *Bylaw*. This is in direct contrast to other development regulations contained in the *Bylaw* which determine that certain distances can be calculated in this way. Specifically, section 54.2(2)(b) which states:

For all other Uses, parking spaces may be provided on a Site located remotely, but no further than 120.0 m from the Site. Such distance shall be measured along

the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development.

- [40] The Board finds that it is clear that Council did not intend to allow this method of calculating distance in section 70.2. The Board further finds that the separation distance calculated by the Development Authority is correct and the direction of Council was followed by refusing this development permit application, pursuant to section 685(4) of the *Municipal Government Act*.
- [41] Further, the Development Authority has no variance power in this matter, as set out in section 70.4 of the *Edmonton Zoning Bylaw*. Therefore, the Development Authority also followed the direction of City Council by not granting a variance.
- [42] Finally, in an appeal in a Direct Development Control District, this Board cannot exercise any variance power that is not given to the Development Authority in the Bylaw, pursuant to *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374.
- [43] Therefore, the appeal is dismissed.

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

Board members in attendance: Ms. S. LaPerle, Mr. R. Handa, Mr. L. Pratt, Ms. S. McCartney

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 the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.