



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: October 4, 2018  
Project Number: 286525142-001  
File Number: SDAB-D-18-149

**Notice of Decision**

- [1] On September 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 23, 2018**. The appeal concerned the decision of the Development Authority, issued on August 14, 2018, to refuse the following development:

**To change the Use from General Retail Stores to a Cannabis Retail Sales.**

- [2] The subject property is on Plan I Blk 67 Lots 1-4, located at 8204 - 104 Street NW, within the DC1 (Historical Commercial) Direct Development Control Provision. The Strathcona Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and forms part of the record:
- A copy of the Development Permit application with attachments, photographs, Suitability Report, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submissions; and
  - The Appellant’s written submissions.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – SLIM map submitted by the Development Officer.

**Preliminary Matters**

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

- [6] The Presiding Officer 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.
- [8] The Presiding Officer referenced section 685(4) of the *Municipal Government Act* which limits the authority of the Board.
- [9] The Appellant was asked to explain how the Development Officer did not follow the direction of Council in refusing this development permit application.

### **Summary of Hearing**

i) *Position of the Appellant, Mr. K. Wakefield, Legal Counsel for the Appellant, Ms. S. Doran:*

- [10] Mr. Wakefield referenced SDAB-D-18-143 issued by the Board on September 18, 2018 that dealt with a site located in a DC1 Direct Development Control Provision.
- [11] He thanked the Board for accelerating the release of decisions relative to Cannabis Retail Sales because it provides guidance to Applicants and future Appellants. He acknowledged that the Board is not bound by precedents, but noted it is important for the Board to be consistent. However, although expedited decisions and consistency is welcomed, it is only valuable if the decision is correct because a wrong decision will simply cascade into the future.
- [12] Given that the recent decision is adverse to his clients, the Appellants, he asked the Board to approach the appeal with an open mind and consider some important nuances to be presented.
- [13] He referenced a page from the City's website, a post dealing with the upcoming Cannabis Retail Zoning entitled "How Can Cannabis Retail Sales be added to a Direct Control or Special Area Zone?" The first paragraph states that property owners of a site in one of these zones can submit rezoning applications. The second paragraph says there are a number of Applicant initiated Direct Control and Special Area rezoning applications currently under review to add Cannabis Retail Sales Use to these zones.
- [14] At present the only administration initiated Direct Control Zone that is being changed is the Old Strathcona Historical Commercial Direct Control Provision. Administration determined it would go through a City led rezoning in March 2018 and a public hearing in June 2018. This Direct Control Zone is being amended because numerous inquiries were received in this area creating a potential for a conflicting application scenario. The Strathcona Business Improvement Association supports the proposed change.

- [15] The City proposed that the Cannabis Retail Sales Use be added as a Permitted Use in conventional zones, including CB2 (General Business Zone). Direct Control Zones and Special Area Zones were not included. The post is saying since they are not included, property owners can apply for a rezoning application. However, the City identified that it would initiate a change to the Old Strathcona Historical Commercial Direct Control Provision (the “DC1”) where Cannabis Retail Sales Use would be added. He referenced a Report to Council that implemented what is advised in the Post, Bylaw 18431. Administration supported the Bylaw to introduce opportunities for Cannabis Retail Sales. Public Consultation included advance notice to property and business owners, several Community Leagues and the Business Revitalization Zone. It was noted that only one response was received asking for further information.
- [16] Cannabis Retail Sales was added as a listed Use to the Strathcona Area Redevelopment Plan on June 12, 2018. A plan of the Historical District was referenced to show the area of the DC1 Zone.
- [17] A map compiled by Development and Zoning Services dated March 2018, was referenced to show the separation distances between Cannabis Retail Sales. It illustrated that virtually all of the DC1 area is subject to separation prohibitions.
- [18] Another plan of the DC1 area was referenced. It shows that the DC1 area is bounded by 81 Avenue and 105 Street, 103 Street or Gateway Boulevard and is only half a block long on the west side.
- [19] The Cannabis Retail Sales Use Application map contained in the Development Officer’s submission was referenced to show the separation distances from the intersection at 104 Street and 82 Avenue to schools, libraries, parks and other approved or applied for Cannabis Retail Sales Uses. When compared to the previous City map it becomes evident that the only site that might be available for a Cannabis Retail Sales Use is located south of the lane south of 82 Avenue, on the lane between 82 and 83 Avenue on 104 Street. A building on that site might be acceptable if it is not located within 200 metres of an approved Cannabis Retail Sales and if it is measured from the north side of 82 Avenue and 104 Street.
- [20] The General Provision of section 710 of the *Edmonton Zoning Bylaw* (the *Bylaw*), that deals with DC1 Zones was referenced. Section 710.4(3) states:
- A development may also be evaluated with respect to its compliance with:
    - a. the objectives and policies of an applicable Statutory Plan;
    - b. the General Regulations and Special Land Use Provisions of this Bylaw; and
    - c. the regulations of abutting Zones.
- [21] The abutting zone located west of the DC1 is CB2.

[22] Section 710.4(5) 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.

[23] Section 11(3) and (4) of the *Bylaw* sets out the variance power of the Development Officer as well as the limitations on that power.

[24] Charter Bylaw 18387, a further amendment to the *Bylaw* pertaining to Cannabis Retail Sales was passed on June 12, 2018. Section 11(1)(3) was added which requires the Development Officer to determine the process for submitting, receiving, determining complete and reviewing Development Permit Applications for Cannabis Retail Sales. Section 11(1)(4) outlines the acknowledgement requirements. Section 70 sets out various separation distance requirements, specifically 200 metres for public libraries and schools, 200 metres from other Cannabis Retail Sales Uses, and 100 metres from any Community Recreation Services Use, a community recreation facility, a provincial health care facility as public lands, or any Site that is designated as school reserve or municipal and school reserve. Measurements are taken as the “crow flies” from the closest point of the lot.

[25] Section 70(4) states that notwithstanding section 11 of the *Bylaw*, a Development Officer shall not grant a variance to subsection 70(2) or 70(3).

[26] In the present case, the Development Officer thought that because of that provision, he could not vary the separation distances which he acknowledged are larger distances than the proposed separation distance. There is no problem with the school, but the distance is shorter from the proposed store to the park with the gazebo and the public library to the north at 84 Avenue. The Development Officer assumed that he could not vary the 200 metre or 100-metre separation distance in this case and that is where he erred.

[27] The essence of this appeal is that section 710.4 of the *Bylaw* provides the variance power to the Development Officer, not section 11. Section 710.4(1) states that all developments shall comply with the development regulations contained in an approved Area Redevelopment Plan or Area Structure Plan. Section 710.4(3) states that a development may also be evaluated with respect to its compliance with: a) the objectives and policies of an applicable Statutory Plan; b) the General Regulations and Special Land Use Provisions of this Bylaw; and c) the regulations of abutting Zones. Clearly the word “may” is discretionary. The Development Officer may use his or her discretion to evaluate a development under any of a, b or c.

[28] In *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 (“*Garneau*”), the Court distinguished between the broad variance power under section 11 which is the normal variance power of the Development Officer for conventional zones with the specific variance power granted to non-conventional zones such as Direct Control Provisions. In paragraph [40] the Court of Appeal stated:

Accordingly, the only permitted variances are specifically enumerated in the Development Criteria of the Garneau Area Redevelopment Plan, and clauses 3 and 5 of the Development Criteria, that is “relaxations that would assist in the achievement of the development criteria” that the development “shall be compatible with the scale, massing and siting of adjacent buildings ....” and “shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and the early 1920’s detached housing in the area.

- [29] Three Court of Appeal Justices determined that section 11 can apply generally, but if there is a variance provision in the DC Zone, then that is what both the Development Officer and the SDAB should have regard to. The Development Officer treated this development as though it were a conventional zone and applied section 11 and then the requirements of section 70, which did not provide any discretion under section 11. This is not a conventional zone. Pursuant to *Garneau* and section 710, there is the discretion to apply the specific Area Redevelopment Plan test. The Development Officer determined that he did not have any discretion but in section 710.4(3) there is discretion and that is the same discretion that the Board has. The Development Officer did not follow the directions because he used section 11, when he should have used section 710.4. Section 710.4(5) says that all regulations in this Bylaw shall apply to development in the Direct Control Provision, unless such regulations are specifically excluded or modified in a Direct Control Provision.
- [30] Section 70 states that the Development Officer does not have variance power pursuant to section 11. That is complied with if the Development Officer or the Board operates under section 710.4. Section 11 and section 710 provide two different variance powers pursuant to *Garneau*. If the Development Officer followed section 11, which does not provide discretion, he must also follow section 710.4 which provides discretion that he did not think was available.
- [31] SDAB-D-18-143, a decision of the Board dated September 18, 2018, at paragraph [41] states:
- 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.
- [32] However, in his opinion, section 70.4 only refers to section 11, the section that provides ordinary variance power. *Garneau* directed the Board to determine in a DC if there is variance in the Area Redevelopment Plan.
- [33] Paragraph [42] of the decision states:
- Finally, in an appeal in a Direct Development Control Provision, 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.

- [34] The principles of this decision are not in dispute in this appeal with regard to section 685(4) of the *Municipal Government Act*. It is agreed that the variance power of the Board is the same as the variance power of the Development Officer in a Direct Development Control Provision. However, it misses the mark because it is forgotten that the other part of the Court of Appeal decision determined that there is an alternative power provided in the Area Redevelopment Plan, section 710.4(3) of the *Edmonton Zoning Bylaw*.
- [35] Section 710.4(3)(c) states that “a development may also be evaluated with respect to its compliance with the regulations of abutting Zones”. The abutting zone in this case is CB2 General Business Zone, a conventional zone, so section 11 would apply.
- [36] The decision of the Board in SDAB-D-18-133, a previous appeal dealing with a Cannabis Retail Sales Use for a site in the CB2 General Business Zone, a conventional zone, was to vary the minimum required separation distance from a school because the school was located on an extremely large lot. Section 685(3) of the *Municipal Government Act* states that “despite subsections (1) and (2), 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(1)”. Cannabis Retail Sales is a Permitted Use and the Board granted a variance. Therefore, if you can evaluate something in the Direct Development Control Provision, the Historical Commercial Zone, with the abutting zone, CB2 General Business Zone, than the Appellant in this case should be in no worse case than the Appellant in this previous decision of the Board.
- [37] SDAB-D-17-071 an appeal dealing with Alcohol Sales was referenced. The principles for liquor and cannabis are very similar. Both are separated from schools or from the same Use. The parallels are compelling. The Reasons for Decision, paragraphs [35], [36], [37] and [38] state:
- [35] The Board finds that the Development Authority did not follow the directions of Council for the following reasons.
- [36] The Development Officer based her refusal on the generally applicable development regulations contained in sections 85.4 and 85.5 of the *Edmonton Zoning Bylaw* (“the Bylaw”).
- [37] Section 85.4 of the *Bylaw* states:
- that any site containing a major Alcohol Sales or Minor Alcohol Sales shall not be located less than 100 metres 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 Major Alcohol Sales or Minor Alcohol Sales. Sites that are greater than 2.0 hectares in size and zoned either CSC or DCS, are exempt from this restriction.
- [38] Section 85.5 of the *Bylaw* states:

that notwithstanding section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 85.4.

[38] The regulations contained in section 85 are identical to the regulations contained in section 70 for Cannabis Retail Sales.

[39] Paragraphs [40], [41] and [42] of SDAB-D-17-071 state:

Based on the plain wording of DC2.919, the Board finds that Council contemplated the development of either a single Minor or Major Alcohol Sales Use within this Site Specific Development Control Zone.

Therefore, the Board finds a direct conflict between the directions of Council contained in DC2.919 and the development regulations contained in section 85.4 and 85.5 of the *Bylaw* that are generally applicable to Minor and Major Alcohol Sales Uses.

The Board notes that section 720.3(3) of the *Bylaw* states that all regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision. This is the DC2 counterpart to 710.3 for DC1 Zones.

[40] Paragraph [43] of SDAB-D-17-071 states:

The Board finds that DC2.919 has specifically excluded or modified the locational criteria pursuant to section 85.4 of the *Bylaw*. Therefore, pursuant to section 720.3(3) of the *Bylaw*, the Development Officer failed to follow the directions of Council by refusing the application based on the development regulations contained in section 85.4 and 85.5 of the *Bylaw*.

[41] If you substituted section 710.4(3) for section 720.3(3) and section 11 for section 85, this is the case for this appeal exactly.

[42] Paragraph [44] of SDAB-D-17-071 states:

This conclusion is also in accordance with the general statutory principle of interpretation that the specific will override the general in the event of a conflict and with the planning principle that Council indicates what is most appropriate for a Direct Control Site in the Site Specific Development Control Provision and therein provides instructions for the development of the Site.

[43] The Historic Commercial Zone specifically provides for Cannabis Retail Sales.

[44] SDAB-D-17-071 is dated May 4, 2017, six months before *Garneau*, dated November 2017. Mr. Wakefield congratulated the Board on anticipating the Court of Appeal decision. Both this decision of the Board and the Court of Appeal decision determined that there are two regimes, one for Direct Control Zones and one for generic zones

making the same conclusion. However, SDAB-D-18-143, dated September 18, 2018 came to a different conclusion and is inconsistent with *Garneau*.

- [45] In the 2017 SDAB decision, the Board determined that specific trumps general. Statutes and Bylaws should be reviewed to prevent arriving at a meaningless result. City Planning decided to rezone the Historical Commercial DC1 to specifically allow Cannabis Retail Sales Use as a permitted use; but under any reasonable interpretation of the minimum required separation distances, the area is not capable of sustaining a Cannabis Retail Sales Use, especially now that one has been approved south of 81 Avenue in a strip mall located east of 104 Street. The question is did Council really intend that when it rezoned, the Cannabis Retail Sales Use was possible on paper but not in the field. The Development Officer cannot vary the separation distance and then there is no appeal if the interpretation in 685(4) is that section 70 which refers to section 11 somehow binds the DC zone which has its own regime for dealing with the discretion - to look at the objects of the zone or compare it to an adjacent zone.
- [46] An excerpt from “Planning Law and Practice in Alberta” by Fred Laux was referenced.
- A Board may canvass a development to ensure that it complies with Council’s directions. In all cases the Board has jurisdiction to examine alleged ambiguities but the Board may not imagine an ambiguity in an attempt to change Council’s decision.
- [47] The Board may not imagine an ambiguity, but it can certainly find one which is the case in this appeal. In this case, Council’s direction was that Cannabis Retail Sales is an appropriate Use in this zone.
- [48] Mr. Wakefield provided the following responses to questions from the Board:
- a) His main argument is *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 and SDAB-D-17-071 both applied the correct principles. Although, SDAB-D-18-143 was headed in the right direction, it overlooked the separate regime available in the DC1 Direct Development Control Provision.
  - b) Direct Control Zones are hybrids in that there is a general enabling Bylaw, section 710 or section 720 that sets out the general ground rules and there is an Area Redevelopment Plan or an Area Structure Plan that establishes the Uses and all of the development standards. Section 710 cannot be separated from the Area Redevelopment Plan because the Area Redevelopment Plan was passed pursuant to section 710. The 2017 Board decision specifically referenced section 720, which is virtually identical to section 710 and considered the requirements in addition to the Area Redevelopment Plan.
- [49] He acknowledged that SDAB-D-17-071 was an appeal for a Site Specific Development, but it was his opinion that pursuant to *Garneau*, it does not matter if the appeal deals with a specific site or multiple sites.



- [50] Section 11 applies to the conventional zones, but it is not incorporated into the DC1 Direct Development Control Provision. Therefore section 11 does not apply to this DC1.
- [51] A Direct Control is a Direct Control. This is a small defined area, zoned Historical Commercial Provision. This is very much like *Garneau* in that the DC Zone is located in the middle of other conventional zones. The Area Redevelopment Plan was amended by the City to add Cannabis Retail Sales as a permitted use. It was his opinion that Council did not think this was a hollow exercise and did not intend to establish separation distance regulations that would only allow Cannabis Retail Sales on one site. If you follow the City's thinking none of them would be allowed but if you follow his thinking any of them have a chance if the Development Officer applies section 710.4(3).
- [52] If a development permit application was made for Cannabis Retail Sales in a CB2 Zone and it complied with all of the development regulations, the Development Officer would have to issue a development permit. That would be Retail Outlet No. 1 and the separation distance from another proposed Cannabis Retail Sales Use would apply which the Development Officer could not vary.
- [53] The Development Officer should have referenced section 710.4(3) which states that he may evaluate a development with respect to its compliance with: a) the objectives and policies of an applicable Statutory Plan; b) the General Regulations and Special Land Use Provisions of this Bylaw; and c) the regulations of abutting Zones. Section 11 and section 70 have absolutely no relevance to this development permit application.
- [54] The key word in this section is "may". The Development Officer does not have to apply section 70 and section 11 which does not provide any discretion. The Development Officer does not have to apply the General Regulations and Special Land Use Provisions. However, they can be applied if there is a good reason to do so. The Development Officer can also evaluate a development according to the objectives and policies of an applicable Statutory Plan or the regulations of an abutting zone.
- [55] He acknowledged that there is an "and" between b) the General Regulations and Special Land Use Provisions of the Bylaw and c) the regulations of abutting zones. However, this results in ambiguity and according to Laux, ambiguity should be resolved in favour of the land owner. Council added Cannabis Retail Sales as a listed Use and it is now essentially worthless.
- [56] Mr. Wakefield reviewed the remainder of his written submissions and provided the following information:
- a) A Gaming, Liquor and Cannabis Licence is required as well as a municipal development permit.
  - b) Numerous restrictions regarding access by minors have been placed on Cannabis Retail Sales which are even stricter than the regulations applied to liquor stores.

- c) The Rationale for the Strathcona Area Development Plan states that this Provision is intended to: a) apply detailed and sensitive control of development and redevelopment within the core historic commercial area of Strathcona; encourage a highly pedestrian, retail commercial environment with offices and other Uses on the upper floors; emphasize and retain the original, historic architectural and urban design characteristics of this area in future renovations and redevelopments; and provide detailed control over specific Sites, which are or may be in the future designated as historic resources under the Alberta Historical Resources Act, in an area which is used for primarily commercial purposes.
- d) The area of application is lots located between 103 Street and 105 Street between 81 Avenue and 83 Avenue, as shown on Map 8.
- e) Cannabis Retail Sales is a Listed Use.
- f) The Development Regulations were reviewed. The sub areas relate to specific buildings in the area.
- g) The subdivision plan and legal titles of ownership were reviewed. The owner of the site on which the Applicant leases space supports the proposed development.
- h) Photographs of the Jupiter Store front were referenced to depict the premises and illustrate different street views.
- i) Numerous letters of support were provided from neighbouring businesses.
- j) The Site Compliance Suitability Report prepared by David Hyde & Associates was prepared as a requirement of the *Alberta Gaming & Liquor Commission and Cannabis (Act) Alberta*. The report concluded that the proposed Retail Store for the development of a retail cannabis store meets or exceeds the regulatory requirements vis-à-vis the security standards required under the AGLC regulations and associated policies. The main conclusions that support the position were reviewed.
- k) The area is characterized by a wide variety of commercial/retail businesses including arts and entertainment premises, clothing stores, restaurants and an array of small and medium-sized shops along popular public streets in the Whyte Avenue district.
- l) The Site Compliance Suitability Report supports the reasons for appeal.
- m) An aerial photograph illustrated the walking distance to the library from the front door of the Jupiter site, walking distance to the park, distance as the crow flies to Wilbert McIntyre Park and the library measured from 104 Street and 82 Avenue. Several additional photographs were referenced to illustrate the location of surrounding businesses and the view from the library looking down 104 Street towards Whyte Avenue.

- n) Numerous letters of support received from business owners were referenced as well as a petition containing 638 signatures of clients and others who support the development permit application.
- [57] Ms. S. Doran is the Applicant and has been the Manager of Jupiter for 15 years. Her parents have owned Jupiter for 36 years and have operated a very good retail store on Whyte Avenue for 27 years.
- [58] Her parents have owned three businesses in Old Strathcona, including Remedy Café, a book store and Jupiter. She is the fourth generation to operate a business in Old Strathcona.
- [59] Jupiter has a very good reputation and recently won the Best of Edmonton View Weekly Award for Top Shop as voted for by Edmontonians. She works in a cannabis culture shop and has experience with cannabis products and has been serving this community for many years. Legalization will result in many changes.
- [60] Jupiter welcomes everyone into a safe environment where her customers feel welcome and valued. 638 customers have signed a petition in support of the appeal. Many of her customers have expressed interest in purchasing cannabis from her because of her knowledge and experience in the field.
- [61] She has received amazing support from neighbouring business owners.
- [62] She is a Métis woman and a member of the Métis Nation of Alberta.
- [63] The City has asked her to be a liaison worker to help aid in the process of the legalization of cannabis. Information received from the City would be shared with her customers. She is honoured to be part of the transition and believes that she is deserving of a licence.
- [64] Mr. Wakefield and Ms. Doran provided the following information in response to questions from the Board:
- a) The separation distance calculation prepared by PALS Surveys is very similar to the calculations of the Development Officer.
  - b) Section 710.4(1) and (3) provide jurisdiction to the Board to consider varying the minimum required separation distance.
  - c) If a Development Officer refers to the development regulations contained in an approved Area Redevelopment Plan, a wide range of discretion is available. All Direct Control Zones have an overriding Area Structure Plan or an Area Redevelopment Plan.
  - d) Council did not include separation distance requirements in the DC1 so by default those regulations are contained in the Area Redevelopment Plan.

- e) Section 710.4(3) allows the Board to consider the regulations for the abutting zone which is CB2.
- f) It is possible to disregard the separation distance requirements in the Bylaw because there are none in the Area Redevelopment Plan. The development complies with section 710.4(1) because there are none but you may also evaluate the development with respect to the objectives and policies of an applicable Statutory Plan and the regulations of abutting zones.
- g) Section 710.4(1) and (3) provide discretion. 710.4(1) takes you to the DC1 for the Historical Commercial Zone and the proposed development complies with the Rationale and the development regulations.
- h) This is a permitted use and separation distances are not included in the definition of a Cannabis Retail Sales Use.
- i) The variance should be granted because the separation distance requirement does not exist for this site. It is a permitted use and complies with the Rationale of the Area Redevelopment Plan. The Site Compliance and Suitability Report supports the location for the proposed development and Whyte Avenue is one of the most suitable places in the City to operate a Cannabis Retail Sales Use.

ii) *Position of the Development Officer, Mr. I. Welch and Mr. M. Gunther, City of Edmonton Law Branch:*

- [65] Mr. Gunther stated that it is clear that the Board can only become involved if the Development Officer did not follow the instructions of Council.
- [66] This is an unusual case that warranted his attendance because the Development Officer elected to issue a refusal based on his belief that there was no path forward for this development. This refusal was issued prematurely because it was an application that was far down the lottery list. Therefore, if this development is approved by the Board it will move up the list and perhaps trump some of the applications further up the list. However, he acknowledged that this is not a consideration for the Board.
- [67] The subject site is located in a DC1 Zone and involves unusual circumstances. The decision that was issued September 18, 2018 by the Board (SDAB-D-18-143) is consistent with the City's determination on how the requirements of the DC1 Zone operate in conjunction with the regulations for a Cannabis Retail Sales Use.
- [68] *Garneau* raises several important points. Firstly, it determined that there is no variance power in a DC Zone outside of what is found in the DC Zone. If a Direct Control Zone allows for discretion on the part of the Development Officer, then the Development Officer has the ability to exercise discretion. If the Development Officer has been

prescribed instructions in the Direct Development Control Provision then there is an expectation given that this is the specific direction of Council for a specific lot or area that those are the requirements.

[69] Section 710 is the governing section that addresses all Direct Development Control Provisions in the City and then the specific ones flow from there into the *Edmonton Zoning Bylaw*.

[70] Section 710.4(5) states that:

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.

[71] The word “shall” in this provision is mandatory.

[72] Section 69.1 of the *Edmonton Zoning Bylaw* deals with Special Land Use Provisions and include Cannabis regulations. Section 69 states “The Special Land Use Provisions apply to the Uses listed in any Zone or Direct Control Provision in which they are located. They shall take precedence and be applied in addition to the requirements of the Zone, except where a Zone, Direct Control Provision or Overlay specifically excludes or modifies these provisions with respect to any Use”.

[73] This section provides the direction of Council in respect to how Special Land Use Provisions are applicable to both conventional zones and Direct Development Control Provisions in the *Edmonton Zoning Bylaw*.

[74] In this case, Council provided direction in section 69 and section 710.4(5) that the regulations and the Special Land Use Provisions are applicable. The Development Officer considered those provisions and applied the required setbacks. Based on the fact that there is an express statement in those provisions that he is not authorized to grant a variance, he followed the direction of Council and did not grant the variance.

[75] The Appellant identified section 710.4(3) as providing discretion to the Development Officer. However, this provision deals with all Direct Development Control Provisions and if that interpretation is accepted, that is contrary to section 710.4(5) and section 69.

[76] In his opinion, section 710.4 deals with true grey areas. The Strathcona Area Redevelopment Plan was referenced as an example. Section (jj) creates a bit of a loose end in terms of the listed Uses. After listing express Uses, (jj) states “Uses consistent with the Rationale of this Provision and where applicable, with designation as a historic resource under the Alberta Historical Resources Act.”

[77] Direct Development Control Provisions often contain a subjective exercise on the part of the Development Officer and this may be where it is appropriate to consider section 710.4(3) and the three listed items to guide the Development Officer to exercise discretion.

- [78] Section 710.4(3) states that “A development may also be evaluated with respect to its compliance with: a) the objectives and policies of an applicable Statutory Plan; b) the General Regulations and Special Land Use Provisions of this Bylaw; and c) the regulations of abutting Zones.” This is not language similar to the *Municipal Government Act* where the wording is more vague and applies discretion or subjectivity. If the Development Officer finds that this section is relevant, he is obliged to evaluate with respect to compliance with these provisions, not simply have regard for them. The Appellant has asked the Board to suggest that the Development Officer should have evaluated whether he ought to comply with section 70, which expressly disallows him from granting a variance
- [79] If the Appellant’s interpretation about discretion were to be the law, it would create a free for all amongst Direct Development Control Provisions and would have significant implications upon the ability of a municipality to use Direct Control Zoning to prescribe the will and special direction of Council and it would result in absurdity. For this reason, the City does not accept or believe the interpretation of the Appellant to be correct in this circumstance.
- [80] SDAB-D-17-071 dealt with a unique situation created by an unforeseen nuance as a result of land consolidation and the creation of the Site Specific Development Control Provision. The DC2 expressly listed one liquor store as being part of the development. Despite expressly listing it, the Development Officer applied the setback requirements for a liquor store. There was only one lot and Council directed that there was to be a liquor store at that location. In that case it is clear that the specific regulations trump the vague regulations because they cannot co-exist. He believes the decision was correct given the circumstance, but that it does not apply here.
- [81] In this case 10431, 10439 and 10421 Whyte Avenue are all locations where a Cannabis Retail Sales Use would receive a development permit within this Direct Development Control Provision. Based on a search of the City mapping system that applies the buffers, there are also several sites on 104 Street that are outside the buffers which means that the separation distances would not apply. These addresses are 8102, 8110, 8114 and 8103. These sites do not appear to be impacted by the setbacks, but for some reason are not marked as guaranteed locations.
- [82] The suggestion that there is some sort of sterilization in place as a result of applying the setbacks is without merit.
- [83] Unfortunately, the subject site does fall within the setback requirements.
- [84] In terms of Direct Development Control Provisions, a decision that interprets section 710.4(3) to allow unfettered discretion on the part of the Development Officer to waive not just Special Land Use Provisions but all general regulations, any regulation that is not within the section would have broad implications. In terms of even the drafting of the

Bylaws, it is clear that the legislation has invoked language, specifically notwithstanding language when a regulation does not apply.

[85] The Development Officer followed the direction of Council and correctly refused the development permit application.

[86] Mr. Gunther provided the following information in response to questions from the Board:

- a) There are locations in the city that are prime locations for Cannabis Retail Sales and ultimately there will only be two or three there that fit in any area of several blocks but that does not result in sterilization.
- b) Resolution of ambiguity is the only applicability of section 710.4(3) that can logically flow from the fact that there are such express statements in section 69 and section 710.4(5) to the effect that the regulations and the land use provisions do apply.
- c) There are three sites in this DC1 Zone that comply with the setback requirements and four more sites that comply with the setback requirements but are not identified on the map. Therefore the zone is not sterilized.
- d) An on-line City SLIM map was referenced and marked as *Exhibit A*. The map identifies sites in the DC1 that meet all of the locational criteria including the separation distance between Cannabis to Cannabis locations. When this DC1 was created there were more than 12 sites that could accommodate Cannabis Retail Sales.

[87] Mr. Welch agreed with Mr. Gunther's interpretation of the City SLIM map. The red site on the map is an approved Cannabis Retail Sales that was approved several weeks ago. The various buffers indicate distances from a school or a park. The peculiar shape results because the buffer is taken from any potential property. The turquoise lines are sites that can still potentially apply for a Cannabis Retail Sales Use. There are five in the DC1 zone that can still qualify.

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

- a) In exercising discretion per section 687(3) of the *Municipal Government Act* or otherwise, the Board has to consider impacts on the surrounding community. Extensive consultation was undertaken with the community at large. The feedback was considered by the legislator, evidence based consideration as to how the regulations should be established.
- b) Legalization has not yet occurred and therefore this development cannot be compared to a Pawn Shop or a Liquor Store. The development regulations were adopted by Council based on the results of public consultation and feedback obtained at a Public Hearing of City Council. There is limited evidence on the ability to ascertain the

impact of this land use, it was their opinion that the Board should elect not to grant the variance even if they determined they had the discretion to do so.

*iii) Position of Affected Property Owners in Support of the Appellant*

Ms. D. Doran

- [89] Ms. Doran has lived on Whyte Avenue her entire life and has lived at her current location for 27 years. She has advocated for the legalization of cannabis for just as long.
- [90] She founded a bookstore, followed by Jupiter and Remedy on 109 Street that was sold. She has devoted her life to enhancing Whyte Avenue.
- [91] Her proposed Cannabis Retail Sales is the only small business on Whyte Avenue and all of her competitors across the street are from large companies with a lot of money.
- [92] Ms. Doran is hopeful that the City will put some value into the work that she has contributed to Whyte Avenue and let a small business obtain a business licence. They have generations of families that shop at Jupiter and they are a safe and trusted place.
- [93] Adjacent to the proposed development are three to four bars and cafes that cater to families with children that serve alcohol to the parents.
- [94] This whole application process has taken a large toll on her family. She has dedicated 15 years in this industry and works for the people who smoke cannabis and there is no one more deserving than her to get a permit for this development.

Mr. J. MacKell

- [95] Mr. MacKell owns a business in the same building as the proposed development. He has owned a flower shop on Whyte Avenue for over six years called Laurel's on Whyte. Both Jupiter and Laurel's on Whyte were voted by the public by Vue Weekly as favourite businesses.
- [96] In his opinion, saying no to this appeal is saying no to small business and no to community minded people. Without small businesses on Whyte Avenue there is no Whyte Avenue.
- [97] The subject park and library are rarely frequented by children and the park has no playgrounds. From his observation, there are more children at the patios on Whyte Avenue than the park and library combined.



Mr. J. Logan

- [98] Mr. Logan has resided 150 feet from Whyte Avenue for 68 years and has been a community member and leader for the neighbourhood on and off for 50 years.
- [99] The subject area is the heart and soul of Whyte Avenue and it is a tourist and cultural hub today because of people like the Appellants. The Appellants have contributed heavily to charity and the community.
- [100] There is overwhelming community support for the proposed development.
- [101] In his opinion, the separation distance regulations are arbitrary and there was no methodology to measure the buffer zone.

*iii) Rebuttal of the Appellant:*

- [102] Mr. Wakefield stated that the map contained in Tab 4 of his submission was taken from a report to City Council, Bylaw 18387, May 27, 2018, entitled Amendment to Bylaw 12800 to include Land Use Regulations for Cannabis Retail Sales and Cannabis Production Distribution Facilities once Cannabis is Legalized. A compass was used to determine the 200 metre separation distances on this map. He questioned why this map is not consistent with the map submitted by the Development Officer, marked *Exhibit A*.
- [103] Mr. Gunther and Mr. Welch clarified that the map contained in the Appellant's written submission contains two circles that overlap. One of the circles included St. Anthony's School, but it is actually the Edmonton Catholic Schools Archives. Therefore it was removed for the buffering process. However, the map included in the Appellant's submission pre-dated that change.
- [104] Mr. Wakefield questioned the submission of conflicting evidence.
- [105] It was noted that 64.8 percent of citizens who were consulted identified Whyte Avenue as an appropriate location for Cannabis Retail Sales.
- [106] Once you acknowledge that one of the Uses could engage section 710.4(3), there is discretion available for the Development Officer.
- [107] The lottery was an administrative function delegated by City Council to Development & Zoning Services as a way to process development permit applications for Cannabis Retail Sales and is not a consideration for the Board.
- [108] He reiterated his opinion that "may" means "may" in section 710.4(3) of the *Edmonton Zoning Bylaw*.

**Decision**

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

**Reasons for Decision**

[110] This is an appeal of an application for a Cannabis Retail Sales Use. The subject Site is located in the DC1 (Historical Commercial) Direct Development Control Provision (the “DC1”) incorporated into the Strathcona Area Redevelopment Plan (the “Plan”). Cannabis Retail Sales is a listed Use in the DC1 pursuant to section 4(f). The DC1 does not contain development regulations specific to Cannabis Retail Sales.

[111] Section 70 of the *Edmonton Zoning Bylaw*, a Special Land Use Provision, regulates Cannabis Retail Sales. It sets minimum separation distances applicable to Cannabis Retail Sales. Sections 70(2) and (3) are relevant to this appeal:

Section 70(2) states:

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;
- b. the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries; and
- c. the term "public or private education" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools.

Section 70(3) states:

Any Site containing a Cannabis Retail Sales shall not be located less than 100 m from any Site being used for Community Recreation Services Use, a community recreation facility, a provincial health care facility, as public lands, or any Site that is designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales. 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 recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and
- c. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.

[112] Section 70(4) provides: “Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2) or 70(3)”.

[113] The Development Officer refused the application because the proposed Cannabis Retail Sales did not comply with the minimum separation distance required from a public library per section 70(2), or with the minimum separation distance required from public lands per section 70(3); and, because per section 70(4) he was prohibited from granting a variance to allow the development.

[114] Based on the evidence provided, the Board finds that, using the Site to Site method of the measurement specified in section 70, the subject Site is located 123 metres from a public library (which does not meet section 70(2)) and 75 metres from a Site used as public lands zoned AP (which does not meet section 70(3)). The proposed development requires two variances for approval.

[115] The subject Site is located within a Direct Control District, therefore the Board’s authority is determined by 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.

[116] Accordingly, the Board must first consider whether or not the Development Officer followed the directions of Council. This question requires some analysis.

[117] Both parties raised SDAB-D-18-143, a decision issued by the Board the day before this hearing. That case involved a proposed Cannabis Retail Sales Use in this same Direct Control District at a location less than 200 metres from a school contrary to section 70(2). After considering the same provisions in the *Bylaw* and the DC1, the Board in that case concluded at paragraph 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.

- [118] The Appellant argued that the conclusion in SDAB-D-18-143 is incorrect: in both that case and in the current appeal, the Development Officer failed to follow the directions of Council because he assumed he could not vary either of the separation distances required in subsections 70(2) or (3). The main thrust of his appeal was that the Development Officer failed to either recognize or consider exercising his other discretion - the discretion found in section 710.4(3). This section provides the Development Officer a variance power which he may exercise apart from section 11 in the DC1 because it has no development regulations specific to Cannabis Retail Sales. He argued that section 11 and 70 have no relevance.
- [119] The Development Officer disagreed with the Appellant's interpretation of section 710.4(3) and argued that SDAB-D-18-143 was correct. The Development Officer had followed the clear directions in section 70 which prohibit him from exercising any discretion to grant variances and require him to refuse to approve the proposed development, notwithstanding section 11.
- [120] The Board agrees with the decision in SDAB-D-18-143 and prefers the interpretation of the relevant *Bylaw* sections put forward by the Development Officer for several reasons.
- [121] The notion that in the absence of development regulations specific to Cannabis Retail Sales within the DC1, the word "may" in section 710.4(3) indicates there is a second, alternate variance power that can be exercised despite section 70(4) is inconsistent with the plain wording of other provisions in the *Bylaw*.
- [122] The Appellant's interpretation of section 710.4(3) is contrary to the plain wording of section 69 of the *Bylaw* which governs the application of Special Land Use Provisions (section 70 is a Special Land Use Provision dealing with Cannabis Retail Sales). It states:

The Special Land Use Provisions apply to the Uses listed in any Zone or Direct Control Provision in which they are located. They shall take precedence and be applied in addition to the requirements of the Zone, except where a Zone, Direct Control Provision or Overlay specifically excludes or modifies these provisions with respect to any Use. [emphasis added]

- [123] The Appellant's interpretation is also contrary to the plain wording of section 710.4(5) which applies, like section 710.4(3), to all DC1 districts:

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.

- [124] The Appellant argues that because there are no development regulations specific to Cannabis Retail Sales in the DC1, section 710.4 means that the Development Officer may, at his discretion, elect to ignore section 70, and instead exercise discretion under section 710.4(3) and consider a variance by evaluating the development “with respect to its compliance with: a. the objectives and policies of an applicable Statutory Plan; b. the General Regulations and Special Land Use Provisions of this Bylaw; and, c. the regulations of abutting Zones.”
- [125] While the proposed development may be consistent with the objectives and policies of the DC1, it is difficult for the Board to understand how the Development Officer could then consider the General Regulations and Special Land Use Provisions (including the whole of section 70 which sets separation distances and then forbids the Development Officer from exercising discretion to vary the distances) to come to a contrary conclusion and allow the proposed development.
- [126] Moreover, if the Development Officer were to look to the third factor in section 710.4(3)(c), he would see that based on the provisions of the adjacent CB2 General Business Zone, he has no authority to grant a variance since, as the Appellant conceded, section 70 would unquestionably apply in whole. It is also difficult to understand how he could use that factor to support effectively granting a variance in the face of section 70.
- [127] The Board prefers the Development Officer’s interpretation of the *Bylaw* that section 710.4(3) provides a set of criteria to guide discretion in the event of an ambiguity within the DC1 itself. This interpretation is logical and harmonious with sections 69, 70 and 710.4(5). It is also consistent with the general concept and purpose of Direct Control Districts. The Board agrees with the Development Officer that the Appellant’s interpretation, taken to its logical conclusion, would enable the Development Officer to evaluate whether or not he ought to follow any Special Land Use Provision (even an outright prohibition such as section 70).
- [128] The Board accepts the Development Officer’s position that such an interpretation, combined with the level of discretion propounded by the Appellant, would inject immeasurable uncertainty into the approval process effectively circumventing the application of any development regulations. This is contrary to the purpose of Direct Control Provisions.
- [129] The Board considered the Appellant’s argument that *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374 supports the appeal.
- [130] The parties agree that the case stands for the proposition that where an appeal relates to land in a Direct Control District, the Board has the very same discretion as the Development Officer. The discretion to grant variances otherwise available only to the Board pursuant to section 687(3)(d) of the *Municipal Government Act*, is not available in Direct Control District appeals.

- [131] The Appellant argued that the Development Officer erred by assessing the development as if it were in a regular CB2 General Business Zone. Then he argued that the Appellant should be in no worse case than another Appellant in a previous decision, SDAB-D-18-133 who was granted a variance by the Board for a development located within a CB2 General Business Zone. The Appellants arguments are incompatible and they are without merit because this property is in a Direct Control District. The arguments ignore the first principle from *Garneau*. In a regular zone the Development Officer has no discretion to allow a variance, but the Board can allow one under its general discretionary authority per section 687(3)(d) of the *Municipal Government Act*. In a Direct Control District, the Development Officer has no discretion and therefore, neither does the Board.
- [132] The Board agrees that *Garneau* examined the scope of the Development Officer's discretion. However, in the Board's view, the Court found that when the plan includes a specific explicit variance power, the Development Officer must nonetheless consider all of the provisions in section 11 governing his variance authority. The Court found that it was an error for the Board to disregard one of those limits (section 11.6(3)) in favour of the broader general power section 11.5. (*Garneau*, paragraph 31). There is no suggestion that either section 11, nor any Special Land Use Provision, can be overlooked pursuant section 710.4(3). The Board does not agree that this case stands for the principle that where the plan is silent with respect to Cannabis Retail Sales, section 710.4(3) creates a variance power that the Development Officer must consider as an alternative to sections 11 and 70.
- [133] The Appellant argued that SDAB-D-17-071, a decision of the Board involving an Alcohol Sales Use should apply in this appeal.
- [134] In SDAB-D-17-071, the land was located in a Direct Control District and the Use was subject to a minimum separation requirement which the Development Officer was prohibited from varying under section 85 which used the same type of prohibitive wording as the current section 70(4).
- [135] The Board considers each case based on the presented evidence and submissions. The Board finds that while there are similarities, SDAB-D-17-071 is distinguishable for several reasons:
- i) The purpose of the districts are different. The Direct Control District at issue in SDAB-D-17-071 was DC2.919 Site Specific Development Control Provision. The purpose of a Site Specific Development Control Provision is to provide for direct control over a specific proposed development where any other Zone would be inappropriate or inadequate (section 720.1). The Direct Control District at issue is a DC1 District. It has a different type of purpose (section 710.1):

The purpose of this Provision is to provide for detailed, sensitive control of the Use, development, siting and design of buildings and disturbance of land where this is necessary to establish, preserve or enhance:

- a) areas of unique character or special environmental concern, as identified and specified in an Area Structure Plan or Area Redevelopment Plan; or
  - b) areas or Sites of special historical, cultural, paleontological, archaeological, prehistorical, natural, scientific or aesthetic interest, as designated under the Historical Resources Act.
- ii) The provisions of the District are different. DC2.919 included specific provisions for an Alcohol Sales Use and contemplated that one, and only one, Alcohol Sales Use would be located on the Site. There is no comparable provision in the DC1.
- iii) The facts are different. As a result of a temporary land amalgamation required during construction of the large mixed use project contemplated in DC2.919, there was only one Site in DC2.919. Only one Site could be used for the purpose of calculating separation distances. The separation distance could not be met given this temporary amalgamation. There was clearly no possible compliant location anywhere in DC2.919. By contrast in this case while the evidence was mixed, there was at least one and up to 12 lots within the DC1 that could comply with the separation distance in section 70.
- iv) The situation in SDAB-D-17-071 clearly created a direct irreconcilable conflict between DC2.919 and section 85 of the *Bylaw*, the generally applicable development regulation which prohibited the variance. The Board found that given this direct conflict, DC2.919 had specifically excluded or modified the locational criteria in the generally applicable regulation per section 720.3(3). In this case the Appellant is not arguing that section 710.4(5) (which is the parallel provision) should apply. The Appellant made a different argument: section 710.4(3) creates an additional discretion because the DC1 is silent with respect to separation distances.
- [136] The Appellant argued that this Direct Control District Provision was initiated by Council and Council added Cannabis Retail Sales to the available listed Uses in the DC1 in June 2018. This meant it was Council's intention that the Use should be available in the field and now it was essentially worthless.
- [137] The Board considered that Cannabis Retail Sales is a listed Use in the DC1. This is a clear indication from Council that the Use be available.
- [138] In this case there was conflicting evidence before the Board about how many potential locations were practically available in the DC1 for this Use. The Board also heard that the number was changing as other Cannabis Retail Sales Uses are approved under a lottery system in anticipation of legalization of recreational cannabis sales. The Appellant argued that only one lot was potentially available based on materials provided by the City to the public. The Development Officer provided a different map and argued that based on their calculations between three to seven lots were potentially available on the day of the hearing, but that when the DC1 was created, there were more than 12 lots that could potentially have accommodated this Use.

- [139] Based on the available evidence about potential sites and lots, the Board agrees with the conclusion that the DC1 was not somehow sterilized from this Use.
- [140] The Appellant also made the related argument that the appeal should be allowed because it was clearly Council's intent that Cannabis Retail Sales was to be in this DC1 and that more than one such development must have been intended when Council added the Use of its own initiative. The Appellant did not specify a number.
- [141] The Board considered the following:
- i) Large portions along Whyte Avenue were identified as preferred locations in the documents before Council and the Use was also added as a Permitted Use in some surrounding Zones.
  - ii) The DC1 is small and the *Bylaw* includes several minimum separation distances from other types of premises and from other Cannabis Retail Sales. Given the later separation requirement, the number of available locations will be necessarily reduced as other Cannabis Retail Sales are approved over time.
  - iii) If Council intended to ensure a specific number of Cannabis Retail Sales in the small DC1 it could have achieved that objective in the DC1 provisions by explicitly saying just that or by specifically excluding or modifying any or all of the various separation requirements in subsections 70(1)(2)(3) or (4). Then by operation of section 710.4(5), Council's express intent would prevail. Council did not do so.
- [142] Absent any express direction, exclusion or modification and based on the evidence before it, the Board cannot assume how many Sites were intended for Cannabis Retail Sales, nor which distances can be disregarded or reduced and by how much. The Board has already explained why looking to the three factors in section 710.4(3)(a),(b) and (c) for these answers will bring it logically back to the Special Land Use Provision in section 70.
- [143] For these reasons, the Board finds that the Development Officer followed the direction of Council by not granting the required variances and declining the application. Pursuant to section 685(4) of the *Municipal Government Act* that ends the matter for the Board.
- [144] The Board notes that it received several submissions regarding the character of the Appellant, her contributions to Whyte Avenue and her long-term commitment to the cannabis industry. This decision is in no way a reflection on those issues. The Board's authority is defined by the provisions of the *Municipal Government Act* and the *Edmonton Zoning Bylaw* as well as the decisions of the Alberta Court of Appeal. The character of an applicant is not a basis upon which the Board may approve a permit.



[145] The Board acknowledges that in the course of the hearing, it also heard evidence about why a variance would be appropriate in this case as well as evidence of strong community support for the proposed development. However, having decided that the Development Officer followed the directions of Council and pursuant to section 685(4) of the *Municipal Government Act*, the Board has no authority whatsoever to substitute its own decision for the Development Officer's decision.

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

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

c.c.

City of Edmonton, Development & Zoning Services, Attn: Mr. I. Welch/Mr. H. Luke  
City of Edmonton, Law Branch, Attn: Mr. M. Gunther

**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.



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## **SDAB-D-18-504**

### **Application No. 267804471-013**

An appeal to construct an exterior alteration (Rooftop Terrace) to an existing Single Detached House was **WITHDRAWN**.