



EDMONTON  
**TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

*10019 – 103 Avenue NW  
Edmonton, AB T5J 0G9  
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**SDAB-D-18-140**

**Application No. 288510987-001**

An appeal to Install (1) Freestanding On-premises Sign (Wilfred's Restaurant), located at 11904 – 104 Avenue was **WITHDRAWN**.



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Date: December 20, 2018  
Project Number: 276136177-001  
File Number: SDAB-D-18-208

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on December 12, 2018, made and passed the following motion:

“That the appeal be scheduled for December 12, 2018 at the written request from the Respondent.”

- [2] On December 12, 2018, the Board made and passed the following motion:

“That SDAB-D-18-208 be raised from the table.”

- [3] On December 12, 2018, the Board dealt with an appeal that was filed on **November 15, 2018**. The appeal concerned the decision of the Development Authority, issued on October 18, 2018, to approve the following development:

**Construct a Semi-detached House with front attached Garages, fireplaces, rear uncovered decks, and Basement developments (NOT to be used as an additional Dwellings).**

- [4] The subject property is on Plan 0521200 Blk 18 Lot 27, located at 9919 - 87 Street NW, within the (RF2) Low Density Infill Zone. The Mature Neighbourhood Overlay, the Floodplain Protection Overlay, and the Riverdale Area Redevelopment Plan apply to the subject property.

- [5] 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 approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions; and
- An e-mail from the Respondent.

**Preliminary Matters**

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [9] At the outset of the hearing, the Presiding Officer outlined section 687(3)(a.3) and (d) and section 685(3) of the *Municipal Government Act*.
- [10] Section 687(a.3) and (d) states:
- In determining an appeal, the subdivision and development appeal board
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- ...
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw [...]
- [11] Section 685(3) states:
- 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(8).
- [12] The Presiding Officer indicated that on December 10, 2018, Charter Bylaw 18638 was signed and passed by Council, which eliminated section 120.4(4) of the (RPL) Planned Lot Residential Zone in the *Edmonton Zoning Bylaw*.
- [13] The Presiding Officer indicated that the Development Permit is now a Class A Permitted Development Use with no variances and the Board does not have jurisdiction under the *Municipal Government Act* to allow an appeal subject to section 685(3).

**Summary of Hearing***i) Position of the Appellant, Mr. J. Fuite*

[14] Mr. Fuite stated that he would not be able to persuade the Board with information to refuse the proposed development and had nothing further to add.

*ii) Position of Mr. A. Chak, Legal Counsel for the Respondent*

[15] Mr. Chak did not have anything further to add and felt the Board did not have jurisdiction to hear the appeal.

*iii) Rebuttal of the Appellant, Mr. J. Fuite*

[16] Mr. Fuite did not have anything to add in rebuttal.

**Decision**

[17] The Board does not assume jurisdiction to hear the appeal.

**Reasons for Decision**

[18] Section 687(a.3) and (d) of the *Municipal Government Act* states:

In determining an appeal, the subdivision and development appeal board

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw [...]

[19] Section 685(3) states:

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(8).

- [20] The Board notes that on December 10, 2018, Charter Bylaw 18638 was signed and passed by Council, which eliminated section 120.4(4) of the (RPL) Planned Lot Residential Zone in the *Edmonton Zoning Bylaw*. Therefore, the subject development is a Class A Permitted Development Use with no variances.
- [21] Based on the above, and with no further evidence submitted at the hearing, the Board has no jurisdiction to hear this appeal.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Ms. S. LaPerle; Mr. A. Nagy

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. K. Mercier / Mr. H. Luke

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



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Date: December 20, 2018  
Project Number: 295328576-001  
File Number: SDAB-D-18-209

**Notice of Decision**

- [1] On December 12, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 23, 2018**. The appeal concerned the decision of the Development Authority, issued on November 22, 2018, to refuse the following development:

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

- [2] The subject property is on Plan 1523747 Blk 27 Lot 5, located at 503 – Griesbach Parade NW, within the (GVC) Griesbach Village Centre Zone. The Griesbach Special Area and the Griesbach Neighbourhood Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions; and
  - An on-line response from a property owner in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A copy of the Subdivision Plan submitted by the Appellant.
  - Exhibit B – A Surveyor’s Report showing consolidation of the site submitted by the Appellant.
  - Exhibit C – A copy of the Notice from AGLC regarding the temporary suspension of cannabis retail licences because of the supply shortage.

### **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.

### **Summary of Hearing**

*i) Position of Mr. J. Murphy, Legal Counsel for the Appellant, DIALOG:*

- [8] The setback violation referenced in this refusal is of a technical nature, only, and if allowed to bar the current application, would lead to the removal of this Permitted Use from the entire site. The development permit was refused because of a deficiency in the minimum required 100 metre setback from a site being used as public lands as measured from the closest point of the subject site boundary to the closest point of another site boundary. In this case, this results in the sterilization of a Permitted Use on this site.
- [9] Cannabis Retail Sales was added as a Permitted Use in the (GVC) Griesbach Village Centre Zone (“GVC Zone”), pursuant to section 940.6 which was amended by Charter Bylaw 18524 on September 5, 2018, after Council passed the general amendments for Cannabis Retail Sales.
- [10] City Administration supported the proposed Charter Bylaw because of the 48 Special Area Zones in the *Edmonton Zoning Bylaw* (the *Bylaw*), the GVC Zone was one of 14 identified as being appropriate for the addition of Cannabis Retail Sales as a Permitted Use. The proposed change supported *The Way We Grow*, the Municipal Development Plan’s strategic goal of Supporting Prosperity: *Edmonton is home to an innovative and diverse business environment that fosters economic development and supports prosperity.*
- [11] A SLIM map was referenced to illustrate that the location of the AP Zone to the north sterilizes Cannabis Retail Sales on any part of the subject site.
- [12] The site zoned AP is comprised of a strip of trees identified as Municipal Reserve. Section 70(3)(c) of the *Bylaw* states that “the term “public lands” is limited to Sites zoned AP and Sites zoned A.” The SLIM map illustrates that even though only a small portion of the subject site located in the northeast corner creates a problem, the calculation of the distance from site-to-site makes it impossible for a Cannabis Retail Sales, a Permitted Use to be approved anywhere on the subject site.



- [13] In reality the proposed Cannabis Retail Sales is located considerably farther from the AP zoned site.
- [14] A Subdivision Plan, marked *Exhibit A*, that created the AP zoned site, was referenced to illustrate that the initial developer convinced the City to take the strip of mature trees located along 97 Street as Municipal Reserve. This reduced the amount of Municipal Reserve that they had to provide and placed the requirement to care for and maintain the trees into the hands of the City.
- [15] It was noted that the Municipal Reserve extends past the hotel and much further to the north.
- [16] There is no question that this land is zoned AP and complies with the term “public lands”, pursuant to Section 70(3)(c) of the *Bylaw* and therefore the Development Officer made the only decision that could be made under these circumstances. However, it was his opinion that this is an unintended consequence because of the drafting of the *Bylaw*.
- [17] A Surveyor’s report, marked *Exhibit B*, was submitted to illustrate that the stand of trees on the AP zoned site provide a buffer between 97 Street, a major arterial roadway and the commercial development located west of 97 Street and the AP zoned Site.
- [18] The proposed development is located in the interior of a large fan-shaped piece of land buffered by a mature stand of trees and other commercial uses on the site.
- [19] Mr. Murphy reiterated that Cannabis Retail Sales is a Permitted Use that conforms with the (GVC) Greisbach Village Centre Zone and therefore meets the test of the Board because it will not unduly interfere with the amenities of the neighbourhood nor materially affect the use, enjoyment or value of neighbouring parcels of land.
- [20] Mr. Murphy indicated that they are agreeable to all of the conditions suggested by the Development Officer. A copy of the notice regarding a moratorium imposed on cannabis licences by AGLC was submitted and marked as *Exhibit C*. Mr. Murphy stated that if the proposed development is approved he would like the Board to amend the condition that the development must commence within nine (9) months to ten (10) months of when AGLC removes its temporary licensing suspension.
- [21] If they are required to wait until after the moratorium is lifted, they could lose their development permit.
- [22] Mr. Murphy provided the following information in response to questions from the Board:
- a) Allowing the development to commence within 10 months of when AGLC removes the temporary licensing suspension will provide a reasonable period of time to allow the developer to comply with the provincial requirements.

- b) With respect to an on-line response in opposition, it was determined that one of the Cannabis Retail Sales stores is located approximately 337 metres south of the subject site and the other is located approximately 500 metres northwest of the subject site. Both comply with the minimum required separation distance requirements pursuant to Section 70(1) of the *Bylaw*.
- c) There is a public sidewalk located on the west side of the stand of trees on the AP zoned site along 97 Street.
- d) It was his assumption that smoking would be allowed on the AP zoned site.
- e) It was estimated that the walking distance from the proposed Cannabis Retail Sales store to the AP zoned site is approximately 250 metres.
- f) It was acknowledged that there is no clear cut way to determine what constitutes a Site and it is often left open to interpretation. In this case there is no objection to the determination of Site made by the Development Officer.

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

[23] The Development Authority did not appear at the hearing and the Board relied on Mr. Chow's written submissions.

**Decision:**

[24] 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 development must commence within ten (10) months of the date when AGLC removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.**
2. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5m (14.76 ft.) setback. (Reference Section 340.4(3) & (5)).
3. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c).

**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 (780-442-5311) for further information.
- b. Signs require separate Development Applications.

[25] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required 100 metres separation distance between the Cannabis Retail Sales Site and any Site being used as public lands, pursuant to section 70(3) is reduced by 30 metres to permit a minimum allowed separation distance of 70 metres.

**Reasons for Decision**

[26] The proposed development is to change the Use from a General Retail Use to a Cannabis Retail Sales store and construct interior alterations. The subject Site is located in the (GVC) Griesbach Village Centre Zone (the “GVC Zone”). Pursuant to section 940.6(3) of the *Edmonton Zoning Bylaw* (the *Bylaw*), Cannabis Retail Sales is a Permitted Use in this Zone.

[27] The Board is mindful of section 687(3)(a.4) of the *Municipal Government Act* (the *Act*). This section directs that in making this decision, the Board must comply with applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act*, respecting the location of premises described in a cannabis licence and distances between those premises and other premises. Based on the submissions of the parties, the Board finds that requirements of those regulations have been satisfied and this Board has met its obligation under section 687(3)(a.4) of the *Act*.

[28] The issue before the Board is whether a variance of 30 metres could be granted in respect of the regulations in section 70(3) of the *Bylaw*. Section 70(3) requires a 100 metres separation distance between the Site of a Cannabis Retail Sales and any Site being used as public lands. The Appellant conceded that as calculated by section 70(3), this separation distance was deficient by 30 metres.

[29] The Board grants the required variance for the following reasons:

- a) Council added Cannabis Retail Sales as a Permitted Use in this Zone because of the 48 Special Area Zones in the *Bylaw*, GVC Zone was one of 14 identified as being appropriate for the addition of Cannabis Retail Sales as a Permitted Use.

- b) A Cannabis Retail Sales Use will require a variance in the minimum required 100 metre separation distance from the public zoned lands no matter where it is located on the subject Site. This would effectively sterilize the entire Site from having a Cannabis Retail Sales Use which is a Permitted Use in the GVC Zone.
  - c) The land zoned AP is not visible from the Site of the proposed Cannabis Retail Sales Use.
  - d) Even though the proposed Cannabis Retail Sales Use is 70 metres from the public zoned land, based on evidence provided by the Appellant, the walking distance between the Sites is 250 metres which is substantially more than the minimum required 100 metre separation distance.
  - e) Based on a review of the photographic evidence provided, the Site zoned as public lands is comprised of a mature stand of trees that has existed at this location for many years and does not contain any playground equipment or amenities that would be typically found in an active park.
  - f) The Board accepts the evidence of the Appellant that the proposed Cannabis Retail Sales Use will provide an amenity to this neighbourhood.
  - g) The Board acknowledges the on-line response that was submitted in opposition to the proposed development but notes that the two Cannabis Retail Sales stores referenced are located some distance from the subject Site and comply with the minimum separation distance requirements.
  - h) No evidence was provided to persuade the Board that approving the proposed development with the required variance would create any undue hardship.
- [30] The Board has imposed conditions suggested by the Development Officer with one condition being amended at the request of Legal Counsel for the Appellant.
- [31] Section 70(6) obliges the Development Officer to a two part condition for a Cannabis Retail Sales. The Board is granting a variance to section 70(6) that states:

The Development Officer shall impose a condition on any Development Permit issued for Cannabis Retail Sales requiring that the development:

- a. shall not commence until authorized by and compliant with superior legislation;  
and
- b. must commence within nine (9) months of the date of approval of the Development Permit.

For the purposes of section 70(6), development commences when the Cannabis Retail Sales Use is established or begins operation.

[32] On November 21, 2018, AGLC placed a temporary suspension on all new applications due to a supply shortage of legal Cannabis. As a result, there is a potential of section 70(6) to create a hardship situation. At the request of the Appellant and to relieve a possible hardship, the Board varied the requirement to: *development must commence within ten (10) months of the date when AGLC removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.*

[33] Based on all of the above, it is the opinion of the Board, that the proposed development, with the required variance, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. B. Gibson; Ms. S. LaPerle; Mr. A. Nagy

c.c. City of Edmonton, Development & Zoning Services, Attn: Mr. S. Chow / Mr. H. Luke

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*