

Appeal No.: 0262 009 2018
Hearing Date: October 30, 2018

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: T. Lacoste
PANEL MEMBER: F. Yakimchuk

BETWEEN:

PRASHANNA VASANTHAKUMAR (QUADZ CANNABIS)
Represented by Prashanna Vasanthakumar
& Matthew Woods
& Sapna Sharma

Appellant

and

CITY OF RED DEER
Represented by Debbie Hill, Development Officer
& Natasha Wirtanen, City Solicitor

Development Officer

DECISION:

The Red Deer Subdivision and Development Appeal Board approves the application for the discretionary use of Cannabis Retail Sales on the Lands located at 1, 5015 48 Street, Red Deer, Alberta legally described as Lot 23 Block 8, Plan 792 0341 zoned C1 (Commercial City Centre District) with the following conditions:

- 1) The development permit is not deemed complete based on this approval until all conditions have been fulfilled.
- 2) All development must conform to the conditions of this permit and the Development Officer must approve the approved plans and any revisions to the approved plans.
- 3) The Appellant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting or any other property owned by The City of Red Deer which is damaged, destroyed or otherwise harmed by development or

construction on the site. Repairs shall be done to the satisfaction of the City of Red Deer, in the event that The City undertakes the repairs the Appellant shall pay the costs incurred by The City within 30 days of being invoiced for such costs.

- 4) Prior to commencing all retail operations, the Appellant shall provide the Development Officer with confirmation that the Appellant has received a retail license for Cannabis from the Alberta Gaming and Liquor Commission.

Reasons for this decision are provided within.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c M-26 (the MGA) as amended.
2. The Board is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.

BACKGROUND:

5. On October 03, 2018, the Municipal Planning Commission (MPC) refused a development permit application by Prashanna Vansanthakumar (the Appellant) for the discretionary use of Cannabis Retail Sales on the Lands located at 1, 5015 48 Street, Red Deer, Alberta legally described as Lot 23 Block 8, Plan 792 0341 zoned CI (Commercial City Centre District).
6. The MPC refused the application for the following reasons:
 - A. The location would materially impact the diversity of economic development in the area; and
 - B. Council established a 300 metre separation distance between Cannabis Retail Sales uses for a purpose, and the requested variance is excessive.
7. The proposed development would be located 138.22 metres from an approved Cannabis Retail Sales location. The Appellant filed an appeal of the refusal on October 9, 2018.

8. The Board entered into evidence the following:

- Exhibit A-1: Hearing Materials (pages 1-6)
- Exhibit B-1: Respondent Report (binder with tabs A-J)
- Exhibit C-1: Appellant Submission (16 pages – cover title ‘CI District’)
- Exhibit C-2: Appellant Submission (6 pages – cover title ‘Quadz Cannabis’)
- Exhibit C-3: Appellant Submission (2 pages – cover title ‘Calgary’)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Appellant

9. The Board heard from the Appellant. The Appellant did not dispute that the proposed development is within 300 metres of an approved Cannabis Retail Store. The Appellant argued that the 300m distance contradicts the intent of the CI (Commercial City Centre) District which states:

5.1 C1 Commercial (City Centre) District

C1

General Purpose

This district is located in the central area of the city with excellent road access, access to transit and a good pedestrian environment. In accordance with the Area Redevelopment Plan, this district is intended to act as the main office area for the city and provide a wide range of commercial, institutional, cultural and residential development. Generally, the land uses are to serve the city and region as a whole.

10. The Appellant addressed the MPC’s reason for denial starting with the level of impact the proposed development would have on economic diversity in the area. He stated that there are currently 4 leases available that are visible from the site of the proposed development and another 4 leases available in the same building as the proposed development.
11. In support of this, the Appellant provided a map of the area with the available leases highlighted and photos of the building fronts with signage indicating they are available for lease (Exhibit C1).
12. It was the Appellant’s argument that the separation distance could be relaxed to 0 to 100 metres and that doing so would provide a good pedestrian environment and healthy retail competition.
13. The second reason for denial was that the requested variance to the setback (54%) is excessive. In response, the Appellant submitted information on similar districts in Calgary and High River, noting that there is no setback requirement in Calgary, while High River requires only a 150 metre setback.

14. The Appellant also stated that businesses in the area are in support of the application and are not concerned about the clustering of cannabis stores. In support, the Appellant provided a copy of a signed statement and business cards from existing businesses (Exhibit C1).

The Development Officer

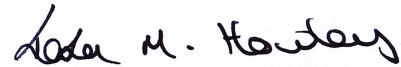
15. The Board heard from the Development Officer. Cannabis Retail Sales is a discretionary use in the C1 District. The Development Officer stated that the proposed site is a multi-unit commercial building with other C1 uses (offices, restaurants, merchandise sales) within the immediate vicinity. The Development Officer stated that the proposed site is appropriate for Cannabis Retail Sales.
16. The Development Officer stated that while the proposed development meets the separation distance restrictions imposed by the Alberta Gaming and Liquor Commission, section 5.7(12)(r)(ii) of the LUB requires that one Cannabis Retail Sales use must be 300 metres from another Cannabis Retail Sales use.
17. The Development Officer stated that an existing Cannabis Retail Sales use is located at 5111 49 Street, which is 138.22 metres from the proposed development (see map Exhibit B.1 Tab D). Section 2.7(l)(j) of the LUB does not allow the Development Officer to vary or waive the setback distance and therefore made a recommendation to the MPC for approval of the application.
18. Aside from the minimum setback requirement, the Development Officer stated that the proposed development complies with the LUB – it will have security systems; it will not have any outdoor storage; will operate between allowable hours (10:00 am – 10:00 pm); has appropriate vehicular access and parking available. The Development Officer's opinion is that any impact of the use on the amenities of the neighbourhood would be akin to the impact of other similar merchandise sales.
19. The Development Officer stated separation distances are in the LUB to avoid clustering of a certain business type and to ensure an appropriate, diverse mix of uses to serve the community. The Development Officer argued that while a variance of 54% could be considered excessive, magnitude does not always determine impact.
20. The Development officer stated that the potential impacts of a shorter separation distance in this case would be mitigated by the physical landscape – the Cannabis Retail Sales uses would be located on different streets, separated by a major four lane roadway (Gaetz Avenue), a lane, and eight commercial buildings.
21. In addition to acting as a barrier, the physical landscape also offers limited opportunity for vehicular and pedestrian connections as well as a visual barrier of commercial (mixed use) buildings. This was supported by a map of the area as well as a photograph taken from the vantage point of the proposed development facing towards the existing Cannabis Retail Sales use.

FINDINGS AND REASONS

22. During the hearing, the Board heard from one area landowner who was neither in favour of the appeal nor opposed to it. The concern identified by the area landowner was with respect to available parking. The Appellant responded, stating that there is parking available. The LUB does not require businesses downtown to provide parking therefore the Board finds that parking is not a decisive factor in this decision.
23. With respect to economic diversity in the area, the Appellant provided information on vacancies near the proposed development, which shows that there is room for growth and diversity.
24. The Development Officer's description of the area suggests an existing diversity - adjacent uses include other CI commercial businesses such as offices, restaurants, merchandise sales and commercial service facilities.
25. The separation map and photo shows that the storefronts of the properties in question face different streets and that the 2 businesses can't see each other. There are 3 approved Cannabis Retail Sales uses within downtown. The Board is not persuaded that approval of this application would result in clustering of the use.
26. Further, the Board believes that filling vacant commercial space in the CI district will lead to increased consumer foot traffic, which in turn increases vibrancy and supports retail diversity in the area.
27. With respect to the setback distance, the Board is guided by the test set out in s. 687(3)(d) of the MGA which states that in determining an appeal, the Board:
 - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
28. There was no evidence presented to support that varying the setback in this situation would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
29. On the other hand, the report of the Development Officer discusses relevant planning principles on which a recommendation for approval was made to the MPC. These included that the proposed development would not cause any disturbance (e.g. noise, odour, smoke or emissions) which would affect businesses in the area or deter other uses in the future.

30. Together with mitigating factors identified above, the Board is convinced by the photographs and maps provided that being separated by an arterial road (4 lane roadway - Gaetz Ave), a lane and 8 commercial buildings, the physical buffer make this an appropriate situation to warrant a variance.
31. For these reasons, the development is approved with conditions as stated earlier.

Dated at the City of Red Deer, in the Province of Alberta this ^{14TH}~~13th~~ day of November, 2018 and signed by the Chair on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



K. Howley, Chair
Subdivision & Development
Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, you must follow the procedure found in section 688 of the *Municipal Government Act*, which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

APPENDIX A

Documents presented at the Hearing and considered by the Board.

- Exhibit A-1: Hearing Materials (pages 1-6)
- Exhibit B-1: Respondent Report (binder with tabs A-J)
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