

**INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD
(ST. PAUL)**

HEARING DATE: August 17, 2023
FILE NO.: 614/DP009-23

Notice of Decision of the Subdivision and Development Appeal Board

INTRODUCTION

[1] The Municipal Planning Commission of the Town of St. Paul (the "MPC") refused a development permit for Alcohol Sales (Liquor Store) and Signage for property located at 4833 – 50 Avenue, St. Paul, AB and legally described as Lot 8-10, Block 8, Plan, 2945AD ("the Lands"). The applicant for the development permit was Navjit Singh Tatla.

[2] The MPC issued its decision on April 28, 2023. On May 18, 2023, Navjit Singh Tatla (the "Appellant") filed an appeal with the Land and Property Rights Tribunal (the "LPRT"). The appeal was submitted to the LPRT because the Development Authority understood that the Lands were subject to an approval which required the appeal to be heard by the LPRT.

[3] On July 17, 2023, the LPRT held a hearing to determine whether the appeal should be heard by the LPRT. In its July 24, 2023 decision, the LPRT determined that the appeal should properly be heard by the Town of St. Paul SDAB.

[4] The Board heard the appeal in person on August 17, 2023.

PRELIMINARY MATTERS

A. Board Members

[5] At the outset of the appeal, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objections to the members of the Board hearing the appeal.

[6] No members of the Board indicated any reason to recuse themselves from hearing this appeal.

B. Exhibits

[7] At the beginning of the hearing the Clerk read the list of exhibits which had been submitted prior to the hearing. None of the parties in attendance had any objection to the exhibits being marked. The Board marked the exhibits (exhibits 1-13) as set out at the end of this decision.

[8] During the hearing, the Development Authority referenced the Town's Variance Application Request Policy. In response to questions from the Board, the Development Authority requested that this Policy be marked as an exhibit. The Policy was distributed to the

Appellant, the Appellant was provided with a brief adjournment to review the terms of the policy. The Appellant stated that they had no objection to the Policy being marked as an exhibit. The Board marked the Policy as an exhibit (exhibit 14).

C. Miscellaneous

[9] There was no request for an adjournment of the hearing.

[10] There were no objections to the proposed hearing process.

[11] The Board has determined that the appeal was filed in time. MPC issued its decision on April 28, 2023 and the Appellant filed its appeal on May 18, 2023, which is within the required 21 days. Even though the appeal was filed with the LPRT, since it was filed in time, this Board has jurisdiction to hear the appeal.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[12] The Board denies the appeal.

SUMMARY OF HEARING

[13] The following is a brief summary of the oral and written evidence submitted to the Board.

Development Authority

[14] The Lands are legally described as Lot 8-10, Block 8, Plan, 2945AD and the municipal address of the Lands is 4833 – 50 Avenue, St. Paul, AB.

[15] The appeal is in relation to an application for a development permit for a liquor store, which is an Alcohol Retail Establishment. The Lands are located in the Town's Central Commercial land use district and are located on Main Street in downtown St. Paul. A liquor store (Alcohol Retail Establishment) is a discretionary use. The central feature of a discretionary use is that the Board may or may not grant the permit depending upon the characteristics of the site, the nature of the development, and the compatibility of the proposed development with neighboring land uses.

[16] Given the fact that the application is for a discretionary use, the Board must be satisfied that the use is appropriate and compatible with neighboring uses. There is no right to a development permit. Each application must be determined on a case-by-case basis based upon the relevant considerations. There is no presumption of compatibility and no presumption that the permit ought to be allowed.

[17] In this case, a variance is required. The Lands are located within 100 meters of two separate Parks as defined under the Town's Land Use Bylaw ("LUB") which requires a 100-meter separation distance.

[18] Under s. 687 (3)(d) of the Municipal Government Act, RSA 2000, c. M-26 (the "MGA"), where a variance is requested, it can only be granted if the Board is of the opinion that granting the variance would not unduly interfere with the amenities, or affect use, enjoyment or value of neighboring parcels. The Development Authority emphasized that the Board must be satisfied that the test for a variance has been met.

[19] The Development Authority prepared a site map (page 73 of the Agenda Package). The Lands are outlined in green. The Lands are immediately north of a residential area, except at the far east end. The Boys and Girls Club is two doors down from the Lands. The Boys and Girls Club offers out of school care and youth programming. There is one building between the proposed development and the Boys and Girls Club. Further east at 4807 – 50 Avenue is the St. Paul Service Canada location. There is seating for the public in front of the building, which meets the definition of Park under the LUB. Directly across the street from the Lands is the Lions Park (4838 - 50 Avenue) as shown in the photographs at pages 74 and 75 of the Agenda Package. Lions Park is an open space with public seating, stage, and public art.

[20] Contrary to the Appellant's assertions, Lions Park does host events for the community including for children and has recently had an opening ceremony. The Appellant's assessment of who uses the park is of limited relevance, if any.

[21] MPC considered the development permit application, including information that there are six (6) existing liquor stores for off-site consumption within St. Paul. This includes one business which serves alcohol on-site and at which alcohol can be purchased for off-site consumption.

[22] The Town's population is a little less than 6,000 people. There are several establishments at which alcohol is served for on-site consumption. However, there is no need to walk more than a few blocks to purchase alcohol within the Town. There is no cap on the number of liquor stores, but there is a limitation on liquor sales due to the requirement for separation distances from other uses.

[23] The LUB establishes the Central Commercial (C1) District (see page 61-64 of the LUB). The LUB at page 62 sets out the list of uses. Alcohol Sales is listed with a "D". This denotes the use is discretionary. The Town's practice is to denote discretionary uses with a "D", a permitted use with a "P" and if the use is neither permitted nor discretionary, the use is denoted with a "-".

[24] The Development Authority clarified that there are 2 commercial districts in Town – C1 and C2.

[25] The LUB at page 284 sets out the definition of "Discretionary Use":

Discretionary Use means the use of land or a building provided for in this Bylaw for which a Development Permit may be issued, with or without conditions, upon an application having been made, at the discretion of the Development Authority.

[26] The Development Authority highlighted two key words. The first is the word "may" which is defined in the LUB at page 304 as follows:

May is an operative word meaning a choice is available with no particular direction or guidance intended.

[27] The second key phrase contained within the definition of "Discretionary Use" is "at the discretion of the Development Authority" which indicates that the proposed development is discretionary.

[28] The Development Authority referred the Board to the definition of "Permitted Use" (page 309 of the LUB) to distinguish the difference between permitted and discretionary uses. The Development Authority noted that if a use is permitted, the Development Authority must issue the permit when all regulations are satisfied.

[29] The Development Authority reviewed the definition of "Alcohol Retail Sales Establishment" (page 271 of the LUB):

Alcohol Retail Sales Establishment means a development or that part of a development possessing a Class D liquor license which is used for the retail sales of any and all types of alcoholic beverages to the public for consumption off premises. This use may include as well as the sale of alcohol the retail sales of related products such as soft drinks and snack foods.

[30] The Development Authority noted the key point of the definition is that the use entails off premises consumption of alcohol.

[31] The Development Authority reviewed the definition of "Public Park" (page 310 of the LUB). Public Park is defined as follows:

Public Park means a development designed or reserved for active or passive recreational uses, including all natural and man-made open space and landscaping, facilities, playing fields, and buildings that are consistent with the general purposes of recreation, whether or not such recreational facilities are publicly operated or operated by other organizations pursuant to arrangements with the public authority owning the public park. Public parks include tot lots, band shells, picnic grounds, pedestrian trails and paths, landscaped buffers, playgrounds, water features, baseball diamonds, football fields, soccer pitches, and similar outdoor sports fields.

[32] The Development Authority noted that the definition of Public Park includes both active and passive recreational uses. During the MPC hearing, MPC determined that the proposed development was within the 100-meter setback required from a Public Park.

[33] S. 5.4 of the LUB (page 143 of the LUB) sets out the development regulations applicable to Alcohol Retail Sales. S. 5.4.2 provides:

In addition to any other regulations of this Bylaw, Alcohol Retail Sales Establishments shall not be located closer than 100 m to any community or recreation facilities, another alcohol retail sales and drinking establishment, a public park, and/or a public or private school. The 100.0 m distance shall be measured along a straight line drawn between the two closest points of the lot lines.

[34] On April 26, 2023, MPC considered the proposed development (see Exhibit 2R). On April 28, 2023, MPC unanimously refuses the development permit application on the basis that it was not consistent with surrounding land uses and the area frequented by minors. Evidence of existing disruptive behavior was presented and the MPC determined that such behaviour could be worsened by the presence of a liquor store.

[35] The Development Authority highlighted the evidence from the Director of Protective Services (page 77 of the Agenda Package). His evidence is that there are problems with loitering and public intoxication. The downtown core particularly has a public intoxication issue, specifically where there is a liquor store. His evidence is that over a 4-week period, 34 tickets were issued in a 2-block radius of the downtown core, which highlights the severity of the issues he identified. The Development Authority stated that the problem will worsen if a new development permit is issued for Alcohol Sales, especially due to the proximity of the proposed development to Lions Park which is directly across from the proposed development. Although the Appellant has characterized the letter from the Director as being opinion, s. 629 of the MGA provides that the Board may accept any oral or written evidence whether admissible in court or not. The Board has broad authority to consider opinion evidence and to draw inferences. The Development Authority noted that portions of the Director's letter are opinion. However, the letter contains observations as well and the Board may draw inferences from those observations. There is no direct evidence of the impact of the proposed development because it is not currently in operation. It is not unusual for a Board to have to consider the potential impact of a proposed development. Assessing the proposed development requires assumptions about land uses. This is the standard framework when the proposed use does not exist. The Board must consider what is relevant and admissible. The evidence before the Board includes the written and verbal submissions including the letter of the Director of Protective Services and the evidence from other affected persons who are the residents nearby.

[36] The Development Authority noted that once the development permit has been issued, there is no ability to reconsider the decision. Therefore, the decision maker must turn its mind to the reasonable inferences that can be drawn including the nature of the proposed development, its location, the existing community impact, other similar uses and what the surrounding properties are used for when considering compatibility and impact.

[37] In response to Board questions, the Development Authority stated:

- a. When asked about how this application compared to other liquor stores, the Development Authority noted that the only development permit application under review was the current one. The details of the other liquor stores are unknown. The existing liquor stores could have been subject to a different LUB. If the Board's concern is cumulative impact, this is a relevant consideration. It is within the proper scope of the Board to consider whether approving another liquor store will add to the current issues existing in the Town. The Development Authority provided an analogy. If there is traffic congestion, the Board could not do anything about the existing congestion. However, when determining whether to approve a discretionary use, the Board could consider whether approving the use would worsen the existing condition. The Development Authority urged the Board to consider the specific

circumstances, including this development permit application, the current circumstances and the cumulative effect of the liquor stores.

- b. The fact that other liquor stores have been approved is not a reason to approve this proposed development. The Board has not been asked to review the other liquor stores.
- c. Lions Park is less than 100 m away. One hundred meters is the separation distance required under s. 5.4 of the LUB. MPC did not grant a variance.
- d. In the Town, there are no other drinking establishments within 100 meters from parks.

[38] The Development Authority noted that the Town has a separate policy that complements the LUB. The Variance Request Policy had not been complied with because there was no application for a variance before MPC. The Policy notes that "hardship" cannot be self-created by choosing a site that cannot meet the setbacks. The hardship in this case was self-created because this site is within the setback distance from a Public Park.

[39] A notable feature of the Policy is that it requires consultation at the time of the variance due to the impact on the neighbors. This Policy was available on the website. While the Policy is not determinative, the Board may take it into account in making its decision.

[40] In response to the Appellant's comments about the Town's Municipal Development Plan ("MDP"), the Development Authority noted that the MDP is a high-level planning document setting out overarching goals. It is an aspirational document containing broad language. The MDP is relevant when assessing a development permit application for a discretionary use, but ultimately the Board's decision must be founded in taking to account whether the use would be appropriate. Since the proposed development is a discretionary use, there is no pre-ordaining of the result, and the Board must look at the specifics of this particular development permit application.

Appellant

[41] The Appellant advised that it has three existing liquor stores, 2 in Cold Lake and 1 in Bonnyville. This is the application for a fourth location under the same company name. The Appellant started its business in 2019. Prior to having its own business, the Appellant has had 15-20 years of experience in the liquor industry with private retail chains and a solo liquor store. The Appellant argued that the fact that the Appellant had significant experience in the liquor industry is a significant factor for the Board's consideration. If the Appellant had previous issues with Alberta Gaming, Liquor and Cannabis ("AGLC"), this would be a concern for the Board. However, there were no such previous concerns against the Appellant or any previous organization with which the Appellant had worked.

[42] The Appellant confirmed that the proposed development is located in the Central Commercial (C1) District. This is the only commercial district in Town. If a liquor store cannot be located within this district, then it cannot be anywhere. Both the LUB and the Town's MDP

state that a liquor store should be located within the C1 and C2 districts, which are the commercial districts of the Town.

[43] In the Appellant's view, there is no difference between the current development permit application and the 5 existing liquor stores which have previously been approved. Some of those existing liquor stores are located in the C1 District and some back onto residential districts. The Appellant noted that the Town had previously approved 5 alcohol sales for identical sites. They questioned why it should not approve this one as well.

[44] The Appellant responded to the letters submitted to the Board from neighbors opposing the proposed development which contained concerns about existing criminal behavior and crime rates. The Appellant stated there is no evidence before the Board that supports that this liquor store will worsen that problem. There is a Chinese restaurant located in the area that may or may not have alcohol sales for on-site consumption. This development permit application is for sale of alcohol for off-site consumption. This is a retail sales operation.

[45] There are strict laws about public consumption. It is up to the authorities to control public consumption and not to the retail provider.

[46] The Appellant was surprised to see a letter from an existing alcohol retailer in opposition to the proposed development. The Appellant's view was that the letter by that liquor store owner was a fear that a discount liquor sales vendor will cause competition and may drive them out of business.

[47] The Appellant emphasized that the provisions of the MDP encourage the attraction of business to St. Paul to provide a wide range of options for its citizens. The MDP encourages a competitive environment. The Appellant is someone from out of town who would offer jobs to the residents of the Town and provide a greater breadth of services.

[48] The Appellant acknowledged that the Lands are within 100 m of Lions Park. The Appellant acknowledged that it is a Public Park as defined in the LUB but stated that there is not much traffic in the park and the Park only infrequently has minors in attendance at the park. It is an empty space which has been turned into a hangout area and is not a true park.

[49] The Appellant noted that the entrance to the proposed development does not face 50th Avenue but faces the side road (49 Street). Although the proposed development is across the street from the Lions Park and is next door but one to the after-school care, the lack of visibility of the front door from 50th Avenue means that the front door is not visible to Lions Park or to the before and after school care program.

[50] The Lands are currently vacant and have been for 18-24 months. The vacancy does not assist with the crime rates. The AGLC requirements require both interior and exterior surveillance. The exterior surveillance would deter criminal activity because there would be more eyes on site. Keeping the Land vacant does not assist with any type of control of criminal activity or the deterrence of criminal activity. The sale of alcohol is a highly regulated business, and its operation would deter future criminal activity.

[51] The Appellant stated that CPTED (Crime Prevention Through Environmental Design) would assist with crime prevention. Because there are high fines applicable to those who do not follow the AGLC requirements, there would be a deterrent to criminal activity.

[52] In response to Board questions, the Appellant stated:

- a. The head office is in Cold Lake. The store manager from the Appellant's existing locations would be transferred to St. Paul. The Appellant would be hiring 2 supervisors (one for the morning and one for the evening) and 2 full-time customer sales representatives, plus part-time workers.
- b. The Appellant proposes to operate the store 7 days a week with a 10:00 am opening. While the store could be open until 2:00 am, the Appellant was not certain how late it would operate.
- c. The Appellant had not checked crime rates for the area on the app or with the RCMP.
- d. If there was a concern about crime rates, the Appellant believed that the MDP encourages such development and does not discourage it.
- e. The Appellant proposed signage on the west including a pylon sign on the main road. There would be no animation on the sign, just the name of the establishment.
- f. The proposed development would be located next to the vape store which was approved in the last year or two.
- g. In response to Board question about why the Board should grant the variance, the Appellant stated that liquor store does not face the main street but the side road. It is not easily visible from the main street. The after-school service is three shops down but does not face the main road.

[53] In its closing comments, the Appellant noted that the variance application was not brought to the Appellant's attention and the first time the Appellant had seen the Policy was today. The Appellant formally requested that the Board grant the variance.

[54] The Appellant pointed to the LUB and the MDP noting the purpose of the C1 District is to permit intensive commercial use and employment within the Town of St. Paul. This development permit application is consistent with that purpose. It is a retail establishment that will make jobs available. The Lands are located within the only commercial area within the Town of 6,000 residents. If the liquor store is not located here, it cannot be located elsewhere.

[55] The proposed development would provide a sixth liquor store, providing more variety for residents and would help to make alcohol more affordable to small town residents. The MDP notes the attempts to revitalize the decaying downtown area. Allowing the proposed development would assist in that revitalization and it is hoped that it would attract business. The sale of alcohol is a highly regulated business which should deter behavior which is not

legal. Approving the development will not affect the amenities or affect use, enjoyment or value. It would support the MDP and the Town as a whole and should be approved.

Those Speaking in Opposition to the Appeal

Nathan Belzil

[56] Mr. Belzil has worked at Trailer Canada since 1990, which is located at the center of the downtown core. He stated that all other liquor establishments are outside of the 100 meter setback distance to Public Parks. In his view, the proposed development is too close to the Boys and Girls Club and Lions Park. He supported the comments made by the Director of Protective Services about the worsening of law enforcement challenges. He stated that the security cameras at Trailer Canada have captured criminal behavior and could be provided if requested. He mentioned that fires had been started by transients which could have burned the block. He stated there is a correlation between the presence of alcohol and the local transients that damage the community. He stated that in response to the Appellant's assertion that there is no evidence that the behavior could be worsened, he had security cameras and 30 years of experience that differs. In his view, the placement of a new liquor store will cause a worsening of the issues.

[57] He stated that people do not come to his establishment due to too much public drunkenness. He stated that allowing the liquor store would be a mistake causing damage and increased policing costs. He stated it is currently not safe to walk down the street due to drunks and transients and another liquor store would make it worse. He urged the Board to uphold the refusal.

Oralea Williams

[58] Ms. Williams is the manager of the bank located west of the development. She has witnessed the destructive behavior caused by alcohol and how it affects her business. In the last two years, she has had to close access to the vestibule in the bank which provides access to the ATM. She has also witnessed aggressive behavior to staff and clients. She is working to move the ATM from the exterior so it would be facing the establishment. She is concerned about the safety of her staff and patrons. She has witnessed what is happening in the park two blocks down due to public consumption of alcohol.

[59] She noted that the children at the Boys and Girls Club walk to and from Lions Park. They should not be exposed to such destructive behavior. Ms. Williams stated that the Boys and Girls Club runs a daycare all day.

[60] She is opposed to the proposed development. As a business owner within the Town, the proposed development would affect her. Her patrons cannot access the ATM.

Dianne deMoissac

[61] Ms. deMoissac lives a few blocks away from the proposed development. She stated that children access the downtown core many times a day. When using the ATM, it is inconvenient to check whether it is safe to do so. The liquor stores in Cold Lake and Bonnyville are not

located in close proximity to children. It is not appropriate to have the proposed development in its current location.

[62] All of those in attendance before the Board confirmed that they had a sufficient opportunity to present their evidence and arguments.

FINDINGS OF FACT

[63] In addition to the specific facts set out under the Board's reasons, the Board finds the following as fact.

[64] The Lands are located at 4833 – 50 Avenue, St. Paul, AB and legally described as Lot 8-10, Block 8, Plan, 2945AD.

[65] The appeal was filed on May 18, 2023. The appeal was filed in time.

[66] The Appellant is an affected person.

[67] Those speaking in opposition to the appeal are affected persons. Those who submitted letters to the Board (Exhibit 13 of the Agenda Package) are affected persons.

REASONS

Affected Persons

[68] The Board must determine whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board; however, the Board wishes to review this issue for completeness.

[69] The Appellant is the applicant for the proposed development. Since it is the Appellant's development permit application under appeal, the Board finds that the Appellant is affected and is entitled to make submission to the Board.

[70] All of those who provided written submissions to the Board are those either living or working in close proximity to the proposed development. Due to their proximity to the proposed development, the Board finds they are affected by the proposed development since they would be impacted by it.

[71] Mr. Belzil, Ms. Williams, and Ms. deMoissac stated that they either live or work in close proximity to the proposed development. As a result of their proximity to the proposed development, the Board finds that they are affected by the proposed development since they would be impacted by it.

Jurisdiction and Issues to be Decided

[72] The Boards jurisdiction is found in s. 687 (3) of the MGA:

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

- (a) repealed 2020 c39 s10(52);
- (a.1) must comply with any applicable land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- (b) must have regard to but is not bound by the subdivision and development regulations;
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[73] In its decision, the Board must determine:

- a. Does the proposed development comply with the applicable statutory plans?
- b. What is the nature of the use?
- c. Is the proposed development compatible with adjacent uses?
- d. If the use is compatible with neighboring uses, should the Board grant the requested variance?

[74] In making this decision, the Board has examined the provisions of the MGA, the MDP and the LUB and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority, the Appellant, and those who spoke in opposition to the appeal and those who provided written submissions to the Board.

Does the proposed development comply with the applicable statutory plans?

[75] The first question the Board must address is whether the proposed development complies with the applicable statutory plans. The only applicable statutory plan is the Town's MDP.

[76] The Appellant argued that proposed development meets the provisions of the MDP and that the refusal of the development permit application would contradict the MDP and the goals set out within it.

[77] The Development Authority noted that the MDP contains general language and is aspirational in nature.

[78] The section of the MDP relied upon by the Appellant is found at page 21 of the MDP.

There has been a strong indication that St. Paul does not offer an adequate range of shops for its residents, especially clothing stores. Therefore, the Town needs to look at strengthening and diversifying its commercial base in order to provide a broader range of retail services and office spaces. This will create more job opportunities and encourage professionals to continue to reside or locate to the Town.

[79] The Board notes that the language of the above section is aspirational in nature. The language does not mandate that this Board consider or approve any form of development. Although the MDP does encourage a broader range of commercial uses and encourages the location of retail services and office spaces within the commercial district, none of the language contained within the Commercial Development provisions of the MDP contain mandatory language compelling the approval of the proposed development.

[80] The Board has considered the Appellant's argument that the refusal of the development permit application would contradict the MDP and goals contained within it. The Board rejects this argument on the basis that the language of the MDP is not mandatory. The language of the MDP encourages a range of shops, and the Board notes that the language specifically encourages clothing stores, not liquor stores. The proposed development is for a liquor store and the Town is currently served by 5 existing liquor stores. The Board is not persuaded by the Appellant's argument that the refusal of the proposed development would contravene the provisions of the MDP given the absence of mandatory language and the aspirational nature of the provisions of the MDP.

[81] The Board notes that the proposed development is consistent with the MDP in that it would be a new business and would provide a limited number of jobs. However, the provisions of the MDP do not provide specific guidance on whether to approve the proposed development. The Board notes the discretionary nature of the proposed development and turns to a consideration of the specific elements of the LUB to determine whether it should grant the appeal.

What is the nature of the use?

[82] The next question is the nature of the use. Both parties agree that the proposed development is an Alcohol Retail Sales Establishment whose purpose will be to offer retail sales of alcoholic beverages to the public for consumption off the premises. The Board finds that the proposed development falls within the definition of Alcohol Retail Sales Establishment and finds that the proposed development is an Alcohol Retail Sales Establishment.

[83] The Board reviewed the map and confirmed that the Lands are located within the C1 District. The Board finds as a fact that the Lands are located within the C1 District.

[84] The Board reviewed the LUB s. 3.9.2 (Central Commercial (C1) District) which lists Alcohol Retail Sales Establishment is a discretionary use within the C1 District. As a result, the Board finds as a fact that the proposed development is a discretionary use within the C1 District.

Is the proposed development compatible with adjacent uses?

[85] Having concluded that the use (Alcohol Retail Sales Establishment) is a discretionary use within the C1 District, the Board must determine whether the proposed development is compatible with neighboring uses.

[14] The object and purpose of a discretionary use is to allow the development authority with assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.¹

[86] The Appellant argued that in light of the commercial nature of the proposed development, it is compatible with neighboring uses because the proposed development can only be located within the commercial district of the Town. The Appellant argued that it can be located in no other area within the Town.

[87] The Development Authority suggested that there were impacts that make the proposed development incompatible, particularly the fact that the evidence of the Director of Protective Services suggests that the proposed development is incompatible.

[88] The Affected Persons also provided evidence about the proximity of the proposed development to residential developments, which the Board inferred was a submission that the proximity of the proposed development to the other residential districts made the proposed development incompatible with them.

[89] The Board agrees with the Development Authority's submissions that this Board must consider the particular facts of this case. While there are other liquor stores, this Board is tasked with considering this development permit application. There was no information before the Board about the other liquor stores. Therefore, the Board notes their existence, but the mere fact that they have been approved is not persuasive, since the Board was given no information to indicate whether they were approved under circumstances similar to this appeal.

¹ Rosedale Community League (1974) v Edmonton (Subdivision and Development Appeal Board), 2009 ABCA 261

[90] The Board considered the nature of the proposed development, which is the retail sales of alcohol for off-premises consumption. Although the product involved is alcohol, the Board notes the retail characteristic of the proposed development and notes that the sale of alcohol is neither permitted nor discretionary in any residential districts but is a discretionary use within the C1 and C2 districts as well as in the industrial district of the Town.

[91] The Board considered the uses in the neighbourhood as shown on page 73 of the Agenda Package. The Board notes that the surrounding uses include various retail stores and restaurants. Looking at the retail component of the proposed development, the Board finds that it is a compatible use. Retail sales within a commercial district is the type of use which would be compatible with other neighboring retail and commercial uses.

[92] The Board has considered the argument that having an alcohol sales next to the residential area is incompatible. The Board notes that in its LUB the Town placed this C1 District next to residential districts. As a result, the Board cannot conclude that the placement of the retail sales (alcohol) in proximity to residential districts in and of itself is a sufficient component to justify the finding of incompatibility given the Town's decision to place these two districts next to each other and to put alcohol sales as a discretionary use within the district.

[93] The Board considered the argument that the Boys and Girls Club is too close to the proposed development of liquor sales. However, the Board notes that the evidence before it is that there is a vape store immediately between the proposed development and the Boys and Girls Club. The Board sees no distinguishing feature between the sale of alcohol and the sale of vaping products. Both are retail sales for off-site consumption. The Board does not find that this proximity, in and of itself, is sufficient to make the proposed development incompatible.

[94] In coming to its conclusion that the proposed development is compatible; the Board considered and rejected the Appellant's argument that its history of compliance with AGLC requirements should be a persuasive factor. The Board regulates use and not the user. While the Appellant may be in compliance with AGLC requirements, if the business were to be sold, the next operator may have different circumstances. The character of the Appellant is not a relevant factor.

Should the Board grant the requested variance?

[95] Having found that the proposed development is compatible with the adjacent uses, the Board must then turn to the question of the variance. Unless the Board grants the variance, the proposed development is not authorized due to the required setback from the Public Park.

[96] Both the Development Authority and the Appellant agree that the proposed development is located within the 100 m required setback from the Public Park, Lions Park, which is across the street from the proposed development.

[97] The test to grant the variance is found in s. 687(3)(d) of the MGA. In order to grant the variance, the Board must be of the opinion that the proposed development would not unduly interfere with the amenities of the neighborhood or materially interfere with or affect use, enjoyment or value of neighboring parcels.

[98] The Board notes that although the Appellant had not completed the application for a variance, this is not determinative for the purposes of the appeal as the Board hears appeals *de novo*. However, the Board does note the provision of the policy which provides that hardship does not include a self-created hardship. In the circumstances of this case, the Board is aware that the Appellant has selected the Lands for the proposed development, even though the Lands are within the required setback distance.

[99] The Appellant argued that the proposed development has to occur in the C1 District because there is no other place in the Town where Alcohol Sales are able to be located. As noted above, the LUB also lists Alcohol Sales as a discretionary use in the Industrial District. In relation to the request for a variance, the Appellant chose a site across the street from (and within 100 m of) a Public Park. Even if the Board was persuaded by the Appellant's argument, the Appellant provided no explanation why it selected a site within the 100 m of Lions Park, when s. 5.4.2 provides for a 100 m required setback.

[100] In considering the request for a variance, the Board has considered the purpose of the setback. The Board is of the view that it is appropriate to consider why the setback distance was imposed, as understanding the reason for the setback will assist the Board in assessing whether to decrease the setback.

[101] There was no direct evidence on the rationale for the setback.

[102] There was evidence before the Board which provides the basis of the inference regarding the rationale set out below. The Director of Protective Services noted (see page 77 of the Agenda Package) that the Town has concerns of people consuming alcohol within public spaces, and public intoxication and loitering in an area where a liquor store already exists. The Director noted that in the 4-week period before July 4, 2023 (the date of his letter) 34 tickets provincial were issued for open liquor and public intoxication. There was other evidence of public intoxication, including the verbal evidence of Ms. Williams and Mr. Belzil, and various of the letters found in exhibit 13. The Board notes the evidence that individuals are able to purchase alcohol from other Alcohol Sales establishments and consume that alcohol within public parks.

[103] The Board infers that the purpose of the 100 m setback is to provide a "buffer", so that those who purchase alcohol for consumption off premises will be less likely to consume the alcohol at a park, which would leave the parks available for other users to access without concerns for their safety or security. The Board infers that the purpose behind the separation is to attempt to keep the consumption of alcohol out of public parks and to make it more difficult for individuals to purchase alcohol and then immediately consume it at a Public Park.

[104] Having the inference about the rationale for the setback in its mind, the Board then turns to the test of variance.

[105] The first part of the test (s. 687(3)(d)(i)(A)) requires the Board to consider whether the granting of the variance would unduly interfere with the amenities of the neighborhood. The Board must first determine what the amenities of the neighborhood are.

[106] The Board notes that an amenity is a desirable or useful feature or facility of a building or place.

[107] In considering the evidence before it, the Board notes that the amenities of the area includes Lions Park and includes the park near the Service Canada Building. The majority of the evidence concerned Lions Park, but the Board notes that this analysis applies equally to the park near the Service Canada building.

[108] The Board finds as a fact that Lions Park and the park near the Service Canada Building are amenities of the neighborhood. The Board heard evidence about a public opening ceremony held recently. Page 74 of the Agenda Package shows the art installations and stage to hold events of a community nature. The Board has considered the purpose of a Public Park is to provide a place of either passive or active recreation and the Board concludes that Public Parks are an amenity – they are a desirable feature of a place where people can recreate or relax.

[109] The evidence before the Board was that downtown St. Paul is the commercial area of the Town (and includes both the C1 and C2 commercial districts). The evidence is that there are various commercial establishments in this area, including retail stores, restaurants, a bank etc. (see page 73 of the Agenda Package). The Appellant advised that the downtown is the only commercial area. The Board finds that it is desirable to have a commercial area where various types of commercial businesses can be located so residents can come for various goods or services. The Board finds as a fact that the commercial district with its various types of businesses is an amenity of the neighbourhood.

[110] Having concluded as a fact that the Public Parks and the commercial district are amenities, the Board must determine whether there would be undue interference with the amenities of the neighbourhood if the Board were to grant the variance.

[111] The wording of s. 687(3)(d)(i)(A) recognizes that there may be some interference with amenities. However, if there is an undue interference, then the Board should not grant the variance.

[112] The Board has reviewed the evidence before it. This evidence includes the evidence of the Director of Protective Services speaking about the concerns of public drunkenness and loitering, particularly around other liquor stores. The evidence of Ms. Williams was that her business (and the ability to access ATMs) was directly affected. Mr. Belzil gave similar evidence. There was similar evidence in the letters to the Board (exhibit 13 of the Agenda Package).

[113] The Appellant's response to these concerns was that the sale of liquor was a highly regulated business. The Appellant also argued that the concerns of public intoxication, etc. should be addressed by law enforcement personnel. The Appellant also argued that there are 5 other liquor stores in Town, so why not add a 6th. Further, the Appellant stated that liquor store does not face the main street but the side road. It is not easily visible from the main street.

[114] The Development Authority argued that the Board must consider only the application before it but should not approve the proposed development if it is likely to cause a worsening of an existing situation.

[115] The Board finds that granting the variance to decrease the required setback would unduly interfere with the amenities of the neighbourhood, both the Public Parks and the commercial district. The Board found the evidence of the Director of Protective Services compelling. His evidence was that the downtown core is "inundated with public intoxication and loitering in an area where a liquor store already exists". The Board accepts this evidence (which was not contradicted by the Appellant). Since there is public intoxication and loitering in an area where an existing liquor store is located and where the liquor store is also for off premises consumption like the proposed development, the Board infers that there would be public intoxication and loitering around the proposed development. Given the proximity of the Lions Park, the Board finds that there would be an enhanced likelihood that at least some of those purchasing alcohol from the proposed development would cross the street to drink the purchase in the Lions Park. Further, having an additional liquor store would increase the likelihood of an impact to the commercial area. For instance, commercial business operators like Ms. Williams could see an increase in negative behaviour.

[116] The Board finds that decreasing the setback would unduly interfere with the amenities of the neighbourhood.

[117] The second part of the test (s. 687(3)(d)(i)(B)) provides that the Board may grant the variance if the proposed development would not materially interfere with or affect use, enjoyment or value of neighboring parcels of land.

[118] There was no evidence before the Board about the effect of value of neighboring parcels except comments made by landowners about the proximity of a liquor store decreasing property values. The Board noted this evidence but did not place significant weight on the statements of value as there were no specifics upon which the Board could draw conclusions.

[119] However, the Board did receive evidence of the potential negative effect on use and enjoyment of neighboring parcels. The Board heard evidence from Ms. Williams who spoke about having to close the vestibule where the ATM is located. She stated she had to close the doors due to abusive behaviour of intoxicated individuals. The evidence of Mr. Belzil was that his business had suffered from the impact of those consuming alcohol. Various writers commented on feeling unsafe as they walked in the commercial district (see Exhibit 13).

[120] The Board notes that where there is already a concern of public intoxication, providing an additional Alcohol Sales establishment is likely to provide an additional opportunity for those who consume alcohol and cause the negative effect to have an increased negative effect on the existing users use and enjoyment of their lands. The Board was particularly swayed by the evidence of Ms. Williams who indicated that her patrons were not able to access the ATM at particular times as well as the fact that her patrons and staff were impacted by the abuse of those who were publicly drunk.

[121] Based on the evidence of the impacts on the use and enjoyment of the neighbouring parcels of land, the Board find that decreasing the required setback would material materially

interfere with and materially affect the neighboring use and enjoyment of the neighboring parcels of land.

[122] The Board was not persuaded by the Appellant's argument that the variance should be granted because the door of the Lands faces 49 Street. The Board is of the view that regardless of the location of the door, liquor sales will still occur. There is a risk that some of those purchasing alcohol may contribute to the impacts already being felt by neighbouring parcels of land. In addition, the evidence of the Appellant was that it was going to be a discount liquor store. The Board infers that being a "discount" sales operation would mean lower cost alcohol, which could lead to increased purchases from this location, leading to a greater impact in the neighbourhood of the Lands.

[123] Having considered the evidence and argument of the Appellant and weighing them against the concerns set out by the neighbours who spoke at the appeal and those who wrote in, the Board was persuaded by the evidence of the neighbours.

[124] For the reasons set out above, the Board finds that to grant the variance (and thus decrease the required set back) would cause an undue interference with the amenities of the neighbourhood and would materially interference with and materially affect the use and enjoyment of neighboring parcels. Based upon its findings, the Board is not prepared to grant the variance.

[125] Since the Board will not grant the variance, the proposed development is located within 100 meters of a Public Park, contrary to the requirements of s. 5.4.2 of the LUB. The proposed development does not meet the required setback. Therefore, the Board denies the appeal.

Conclusion

[126] For the above reasons, the Board dismisses the appeal.

[127] Issued this 28th day of August, 2023 for the Intermunicipal Subdivision and Development Appeal Board (St. Paul).



D. Schultz, Chair

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to s. 688 of the Municipal Government Act, RSA 2000, c. M-26.

APPENDIX "A"
REPRESENTATIONS

	Person Appearing
1.	Daina Young, Reynolds Mirth Richards and Farmer, Counsel for the Development Authority
2.	Aline Brousseau, Director of Planning and Legislative Services, Town of St. Paul
3.	Amanpreet Grewal, Caron and Partners LLP, Counsel for the Appellant
4.	Nathan Belzil, Affected Person
5.	Oralea Williams, Affected Person
6.	Dianne deMoissac, Affected Person

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

Exhibit	Description
1.	Land and Property Right Tribunal Decision
2.	Notice of Appeal
3.	Information Package
4.	Submission from the Town regarding emails
5.	Municipal Development Plan
6.	Land Use Bylaw
7.	Filed Development Permit D-2013-017 and letter of concern
8.	Submissions
9.	Letter to the Land of Property Rights Tribunal
10.	LPRT Submission
11.	Letter to A. Brousseau
12.	Appellant Submission
13.	Correspondence from Neighbors
14.	Town Variance Application Request Policy