

HIGH RIVER SUBDIVISION & DEVELOPMENT APPEAL BOARD

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Case Name: 2018-07-16-KDF

File No: DP1102.18

Appeal by: KDF MGMT INC.
Appeal against: Development Authority of the Town of High River
Hearing date: Tuesday, August 14, 2018
Decision date: Tuesday, August 28, 2018
Board members: Jim Graham, Chair
Tricia Rakos
Tom Sales

DECISION

Description of Application:

1. The appeal before the Subdivision and Development Appeal Board (the "Board") was brought by KDF MGMT INC.
2. On June 26, 2018, the Development Authority approved with conditions the application of J&S Creative Renovation Ltd for changes to the use of Lots 4 & 5 at 309 – 1 Street SW, High River, AB. The property is owned by Hansen Land Company and has the following land use designation: Central Business District. The proposed change of use to the site is discretionary within this district.

Procedural History:

3. There were no procedural issues with this appeal therefore the Board commenced with the hearing on August 14, 2018 as scheduled.

Decision:

4. The appeal is denied and the decision of the Development Authority is upheld. A Development Permit shall be issued.

Appearances:

5. The Board received submissions from:
 - a) Khalid Mohammed, Christine Berger and Sarah Peck for the Development Authority
 - b) Mr. David Fitzgerald and Mrs. Karla Fitzgerald as the appellants

Background and Summary of Evidence:

Background

6. On May 28, 2018, Council approved Bylaw 4537/2018 Amendment to Land Use Bylaw – Cannabis Land Use Regulations. The owner of Lots 4 & 5 at 309 – 1 Street SW, High River, AB (subject property) submitted a change of use/intensification application for a cannabis retail store. This is a discretionary use in the Central Business District as per the Land Use Bylaw and there are no variances required.

Submission of the Development Authority

7. Ms. Peck stated that the application for development permit 1102.18 for a cannabis retail store was accepted as complete on June 11, 2018. Staff circulated the application internally for comments from June 19 to June 25. The Development Authority issued the Notice of Decision on June 26 which was 15 days after the date the application was accepted as complete. The Notice of Decision was posted on the Town's website and was posted at the property on June 26. The public appeal period was from June 26 to July 17. The appeal was received by the Town on July 17, 2018.
8. Ms. Peck noted that a change of use development permit for a cannabis counselling clinic was approved on April 20, 2018. This is a permitted use in the Central Business District therefore an appeal period was not required. On July 14, 2018 the Town gave the owner permission to have a temporary banner sign and window signs with the expectation that these are removed by November 2, 2018.
9. The Development Authority pointed out that the proposal complies with the Town Plan (Municipal Development Plan) and the Downtown Area Redevelopment Plan. Ms. Peck explained that these plans specifically speak to development in the downtown core by encouraging a diversity of street-oriented retail among other commercial uses.
10. Ms. Peck indicated that the property is located within the Central Business District and according to the Land Use Bylaw cannabis store is a discretionary use within this district. The cannabis store regulations that specifically apply to the Central Business District state the separation distance between a proposed store and an existing store as 150 metre radial distance.
11. It was noted that this was the second application for a cannabis store in the Central Business District. The first site was not within 150 m of the subject property. There has since been a cannabis store approved within 150 m of the subject property. The Development Authority determined the cumulative impacts are minimal because the stores are located on different streets.
12. Ms. Peck briefly summarized the separation distances for cannabis stores and sensitive land uses set out in the Land Use Bylaw. This includes separation distances from parks, schools, and hospitals. The provincial regulations include a separation distance of 100 m from schools and hospitals however it did not include provisions related to parks. The province allowed municipalities to vary these distances in their bylaws at their discretion.
13. It was further noted that these separation distances do not apply to the Central Business District. Administration proposed separation distances to Council at the first reading and the public hearing for Bylaw 4537/2018 however Council was concerned with the affect these distances would have on opportunities for cannabis stores in the downtown area. Council, however,

remained concerned about the distance from schools. It was determined that the children attending the early childhood programs in the downtown area were too young to be unattended therefore unaffected by a cannabis store. Ms. Peck pointed out that both George Lane Park and the Rotary Park are more than 100 m away from the subject property.

14. Ms. Peck explained the Town requires a business license for all businesses and will not issue one until all conditions associated with the development permit have been fulfilled. Specifically, the business owner is required to obtain all applicable approvals from other levels of government prior to issuing a business license.
15. Ms. Peck noted that the original approval for the cannabis counseling clinic will be withdrawn now that it is approved as a cannabis retail store.
16. Ms. Peck reiterated that the application complies with the Town Plan, Downtown Area Redevelopment Plan and the Land Use Bylaw.

Submission of the Appellant

17. Mr. and Mrs. David and Karla Fitzgerald own the Pizza Hut located at 311 – 1 Street SW, High River, AB which neighbours the cannabis store.
18. Mrs. Karla Fitzgerald noted the first reading of the cannabis amendment to the Land Use Bylaw was presented to include restrictions within the Central Business District on April 23, 2018. Mrs. Fitzgerald pointed out that they did not feel their business would be directly impacted because of the early childhood care centres within the Central Business District. Mrs. Fitzgerald referred to the Alberta Gaming, Liquor and Cannabis Regulation, specifically Part 4: Cannabis, Division 1: Restriction on cannabis locations that fall within 100 metres of health care facilities, school, or areas designated school reserve.
19. It was further noted the second and third readings included changes that removed the restrictions from the Central Business District changing the dynamic in the downtown core and the impact to their business. Mrs. Fitzgerald referred to the amended Land Use Bylaw for the retail sale of cannabis, specifically the removal of any set separation distance from sensitive land uses within the Central Business District (downtown core).
20. Mrs. Fitzgerald highlighted the positives and negatives of owning a business in the Central Business District noting the many events bring additional business and opportunities to interact with the public.
21. The appellant expressed concerns with clustering of cannabis stores in the downtown area, the impact on parking as well as the hours of operation and the impact this will have on the downtown core. Mrs. Fitzgerald added there are not many other cannabis type stores located outside of the downtown area noting only one located on 12 Avenue SE near the Tim Hortons. Mrs. Fitzgerald drew attention to Ontario in comparison to High River. It was noted that Ontario has only started with four locations compared to High River which is a town of 14,000 people.
22. Mrs. Fitzgerald acknowledged the safety measures provided for in the Alberta Gaming, Liquor and Cannabis Regulation noting they are comfortable with these safety conditions. The appellant noted concerns about exposure and smell to their staff. Mrs. Fitzgerald reported issues with carbon monoxide and their make-up air system and the use of generators by vendors for events in the downtown core therefore they are having similar concerns with the cannabis store next door.

23. Mrs. Fitzgerald stated that a cannabis store in the Historical Precinct does not fit with what the Town is trying to accomplish in the downtown area noting the requirement for blacked out windows on cannabis stores.
24. It was noted that Councillor Jamie Kinghorn asked Council to postpone the second reading however this was defeated. Mrs. Fitzgerald indicated her disappointment in the passing of the amendment to the Land Use Bylaw for cannabis adding there was inadequate use of public input considering the town survey on Regulations for Recreational Cannabis in High River resulted in 90.45% of respondents voting for a distance of 100 m or greater from hospitals and schools and 62.70% of respondents voting that cannabis retail stores should be separated by at least 150 m from public parks. The Bylaw was supposed to protect them and there was no indication that the Central Business District would not have any restrictions at the first reading of the Bylaw.
25. The appellant was reminded that the Board can only hear planning related evidence and cannot consider how the Bylaw was passed in its decision.
26. Mrs. Fitzgerald clarified that their objection to the cannabis store is related to the impact on the downtown Historical Precinct, the culture it will create in the downtown and the safety of the businesses, customer and employees in the community. The cannabis store next door brings to question how their business will run. It was noted that the separation distances should have been maintained in the Central Business District.

Reasons:

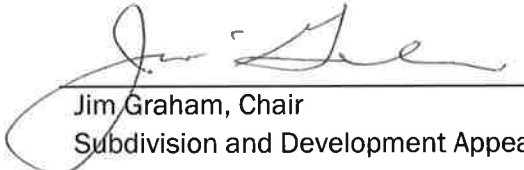
27. The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons.
28. The Board finds that with respect to Part 3: Land Use Districts, Central Business District of the Land Use Bylaw, the Development Authority worked within its rights in relation to the approval of a change of use/intensification application for a cannabis retail store located at 309 – 1 Street SW, Lots 4 &5, High River, AB. In addition, the Board finds that the Development Authority adhered to the appeal process pursuant to Section 686 of the *Municipal Government Act* and adequate notification was provided to the adjacent land owners.
29. Regarding Part 3: Land Use Districts, Central Business District of the Land Use Bylaw, the Board finds that there have been sufficient reasons given for the merit of the proposed development. The Notice of Decision outlines the permanent conditions which must be met prior to issuance of a business license. The owner is required to obtain all applicable approvals from other levels of government as well as implement additional crime prevention measures above those provided by Alberta Gaming, Liquor and Cannabis Regulation. The development is pre-existing therefore there are no parking requirements as parking in the downtown core has already been established. Additionally, amending Bylaw 4537-2018 does not require separation distances from parks and schools in the Central Business District and the Development Authority has shown adequate discretion with proposed cannabis retail stores within a 150 metre radial distance of each other.
30. The Board agrees that the proposed development is in line with the Town Plan and the Downtown Area Redevelopment Plan in that it adds to the diversity of the retail and commercial uses available in the downtown area.
31. The Board, based on the evidence, finds that the proposed development as a whole, from a planning perspective, has no negative impact on the neighbouring properties and the Central

Business District. In the Board's view, for the reasons enunciated above, the development does not unduly affect the use and enjoyment of the adjacent properties.

32. The Board, while it acknowledges the appellant expressed some concerns with the way the Bylaw was amended and the possible impacts on their business, it does not see these as necessary or sufficient conditions to accept the appeal.
33. In researching the cannabis regulations in Ontario, the Board used as a reference the attached article on cannabis sales in Ontario (Attachment 1). The article outlines a mixed public-private model in Ontario however this information has not been confirmed. It states the current plan is to open 40 public sector Ontario cannabis stores some with more than one outlet.
34. Having regard to the merits of the application and sound planning considerations, the Board, based on the evidence and aforementioned factors, in keep with Part 3: Land Use Districts, Central Business District of the Land Use Bylaw, finds that the proposed development is compatible with the adjacent developments and the immediate neighbourhood. The Board finds that the development is appropriate for the site and therefore finds that the application warrants approval.

Conclusion:

35. For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld. A Development Permit shall be issued as originally issued by the Development Authority.



Jim Graham, Chair

Subdivision and Development Appeal Board

ATTACHMENT 1

Canada July 31, 2018 7:21 am

Is Ontario planning a mix of public, private retail cannabis stores?



By Patrick Cain

National Online Journalist, News Global News



A woman walks into a marijuana dispensary on Granville Street on June 20, 2018, in Vancouver.

GETTY IMAGES

Hiring is proceeding as planned for a rollout of 40 public-sector Ontario cannabis stores, according to a document shown to Global News.

The government-owned Ontario Cannabis Store told the personnel agency Randstad to keep hiring for cannabis retail positions in government stores after a story appeared in *the Globe and Mail* last

Thursday, saying that Ontario had opted to let the private sector sell marijuana, the document shows.

Related

-  **Who will sell legal marijuana in Ontario, and where? It's no longer clear**
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- **Doug Ford gives hazy details for Ontario PC Party plan on marijuana**
- **'We must protect the children': Ford on location of cannabis sales**
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Randstad has been contracted to hire retail workers for cannabis stores in 27 different Ontario communities.

Randstad did not respond to repeated requests for comment. The Ontario Cannabis Store forwarded questions to the province's finance ministry, which would not comment about the government's plans for cannabis retail.

READ MORE: Ontario's much-criticized pot store logo pitched as 'inviting, not youthful' and 'contemporary, not trendy'

WATCH: Extended tour of Canada's largest government-approved pot greenhouse

Ontario's PC government hasn't made a formal announcement about its plans for marijuana sales, though the facts in the *Globe* story haven't been publicly disputed.

A mixed public-private model would give Ontario a marijuana retail system much like British Columbia's.

It would also open the Ontario cannabis market to the private sector, while not wasting the money that has been spent up to this point in hiring, and leasing and renovating physical stores, for a public-sector system. Some 23 people say in their LinkedIn profiles that they are store managers at the OCS, though only four store locations have been publicly announced.

Recreational marijuana will be legal across Canada on Oct. 17.

READ MORE: Doug Ford gives hazy details for Ontario PC Party plan on marijuana

WATCH: 'We must protect the children': Ford on location of cannabis sales

The previous Liberal government had announced a completely public-sector system of cannabis sales, with stores staffed by members of the Ontario Public Sector Employees Union.

If Ontario does open public-sector stores, they must be staffed with OPSEU members, according to a deal signed last year.

“It wouldn’t be my first choice — I’d like them all public — but they have hybrid systems elsewhere,” says OPSEU president Warren (Smokey) Thomas. “B.C. has had a hybrid alcohol model for quite some time, and they seem to compete and make each other do a little better.”

“It wouldn’t be the end of the world, put it that way.”

READ MORE: Canada will allow pot, but Facebook isn’t allowing ads talking about it

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