

Town of Canmore

902 7th Avenue

Canmore, Alberta T1W 3K1

Phone: 403.678.1500 | Fax: 403.678.1534

www.canmore.ca



SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER

APPEAL NO. 2018-016

DP 2018-123

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED October 23, 2018.

Board Members Hearing the Appeal: Councillor Vi Sandford, Mr. Greg Birch, Ms. Rochelle Harding, Ms. Jamieson and Mr. Krausert.

AND IN THE MATTER of the Municipal Government Act Revised Statutes of Alberta 2000, Chapter M-26, as amended;

AND IN THE MATTER of an appeal by Shawn Kumar against a Development Permit – Cannabis Retail Store. Appeal against a Refusal by the Development Officer

This appeal hearing having been duly opened before the Subdivision & Development Appeal Board on October 18, 2018.

AND UPON hearing oral submissions from the Appellant and Development Officer.

AND UPON hearing oral and written submissions from the public.

AND UPON having regard to the Town of Canmore Land Use Bylaw No. 22 of 2010 (Bylaw), the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended and other relevant planning documents;

DECISION

DP2018-123

Development Permit – Cannabis Retail Store

103A, 1205 Bow Valley Trail

Lot 11, Block 1, Plan 971 0479

Appeal Against a Refusal by the Development Officer

FINDINGS OF FACT

- i. Section 642(5) of the Municipal Government Act (“MGA”) states that despite subsections (1) and (2), a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of 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.

- ii. The premises in question requires a cannabis license.
- iii. The premises is located approximately 94 metres from a provincial health care facility and 15 metres from the boundary of the parcel of land on which the provincial health care facility is located.
- iv. Section 105(3) of the Gaming, Liquor and Cannabis Regulations ("GLCR") requires that a premises that is subject of a cannabis license may not have any part of an exterior wall located within 100 metres of a provincial health care facility or boundary of the parcel of land on which the facility is located.
- v. The only way that the distances set out in s. 105(3) GLCR can be varied is by Land Use Bylaw ("LUB") (as per s. 105(5) GLCR) or by an application by the municipality that is approved in writing by the Gaming Liquor and Cannabis Board (as per s. 105(6)&(&) GLCR).
- vi. The distances set out in s. 105(3) GLCR have not been varied in Canmore by either the LUB or application by the municipality.
- vii. There was one submission in support of the appeal and four submission in opposition. Three people spoke in opposition.

THE BOARD THEREFORE ORDERS THAT

The appeal be REFUSED and DP2018-123 be denied.

REASONS:

- i. The Subdivision and Development Appeal Board ("S/DAB") does not have the authority to vary the distances set out in s. 105(3) GLCR.
- ii. The premises in question, being subject to a cannabis license, must comply with s. 105(3) GLCR unless these distances have been varied by means set out in the GLCR.
- iii. Given that the distances set out in s. 105(3) GLCR have not been varied by means set out in the GLCR and the premises in question is not in compliance with these distances, pursuant to s. 642(5) MGA the S/DAB cannot uphold an appeal that would be in violation of the GLCR.
- iv. Further, the S/DAB has no authority to either (a) direct Council to vary the s. 105(3) GLCR distances by amending the LUB, or (b) direct the municipality to apply for a variance to the s. 105(3) GLCR distances.

OCT 25 / 2018

Date Signed



VICE CHAIRPERSON GREG BIRCH
SUBDIVISION & DEVELOPMENT APPEAL

An application for leave to appeal to the Court of Queens Bench shall be made:

a) to a judge of the Appellant Division, and; within 30 days after the issue of the order, decision, permit or approval sought to be appeal.