

1410 East 49th Avenue – Board Minutes and Decision

Appeal Section: 573(1)(a) - Appeal of Decision (New Cannabis Store)
Legal Description: Lot A, Block 9, District Lot 738 and Plan BCP 40920
Lot Size: Irregular site
Zone: C-1
Related By-Law Clause: Section 11.6 (Cannabis Guidelines)

Appeal Description:

Appealing the decision of the Director of Planning who refused Development Application No. DP-2022-00911 and a request to permit interior alterations and change of use of approximately 605.0 square feet on the ground floor from Retail Store to a **new Cannabis Retail Store** in this existing 3-storey plus basement mixed-use building on the site.

Development Application No. DP-2022-00911 was refused for the following reasons:

- Objections have been received from neighbouring property owners.
- The proposed development does not comply with the regulations of the Zoning and Development By-law that affect the site.
- The proposed development does not satisfactorily comply with the policies or guidelines that affect this site.

Discussion:

Jack Lloyd were present to speak in support of the appeal.

At the request of the Chair, the appellant agreed to dispense with the reading of the submission, which had been in the Members' possession prior to the meeting.

The appellant's initial comments were that they currently have a store in Castlegar, BC, so they're familiar with how operation works. The lot had been vacant for over a year, and it's prone to break ins due to it being vacant. This is zoned as a commercial space, with ballistic glass built in. The landlord is in support of this appeal.

The Director of Planning's Representative

Mr. Bosnjak's initial comments were that this is to refuse permit for a change of use from a retail use to a cannabis use. There are two buffering failures, they're within 24 meters from Sir Stanford Elementary School, and there is a Youth Center that is across the street, where they treat patients with addictions. They received multiple opposition letters from neighbours. The Director of Planning is not in support of the appeal.

The Board Chair stated that the Board's site office received no (0) letter in Support and fifteen (15) letters in opposition to this appeal.

The Chair stated that if there were any interested parties in the audience who wished to speak to this appeal, they should raise their hand to be recognized and when recognized, state their full name and address and spell their surname for the record.

There were no comments.

Final Comments:

Mr. Bosnjak's final comments were that the Director of Planning refused this due to distancing to an Elementary School, as well as a Youth Center. They do not see a site specific hardship, and cannot support the appeal.

The appellant's final comments were that they canvassed the neighbourhood, and they have received support from the surrounding area.

This appeal was heard by the Board of Variance on May 23rd, 2023 and was DISALLOWED.

Board's summary and decision based on the following:

- The Board did NOT find a site hardship to allow this appeal as the proposed cannabis store is too close to schools and a youth center.
- The Board also received zero (0) Support Letters and fifteen (15) Opposition letters from the neighbourhood (from the Board's neighbourhood notices)
- The Board upheld the City's decision and opposed the appeal.

May 11, 2023
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The Applicant will operate in compliance with all City of Vancouver and Provincial licensing regulations, and the Applicant will respect the appeal and application process.

The Applicant will be providing all supporting documentation, including letters from their landlord, neighbours, surrounding businesses, and affected local parties, and will furnish them to your office in good time prior to the BOV appeal appearance on May 23, 2023.

Mr. Louis Ng has requested an explanation letter, which my client has provided. Payment has also been provided for the BOV Appeal application fee.

Should you have any questions or wish to discuss this matter further, I am available at your convenience.

Thank you,



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Counsel to the Applicant

LETTER OF HARDSHIP

It is my understanding that the City of Vancouver requires cannabis-related businesses to be located at least 300 meters from any other cannabis-related business in order to avoid clustering issues within the City of Vancouver. Further, a proposed cannabis storefront cannot be less than 300 meters from any school.

The Applicant supports and is respectful of this concern held by the City of Vancouver and is supportive of the motivations behind the rule. This rule prevents the proliferation of similar businesses in certain areas of the municipality, and has other valid purposes that are wholly and properly within the mandate of the City of Vancouver. However, the Applicant should be permitted to remain in its current location because although the City has found that there are 4 grounds for refusal, those grounds are not aligned with the spirit of the governing bylaw. As a result, the underlying purpose and motive of the 300 meter rule is not undermined by the existence of the Applicant's proposed storefront, nor does it exacerbate any clustering issue faced by the City.

The four grounds for refusal are:

- 1) Local objections;**
- 2) Non-compliance – Regulations;**
- 3) Non-compliance – Policies and Guidelines;**
- 4) Unsatisfactory use**

It is submitted that these four grounds of refusal are not in fact a proper barrier to the proposed use given the unique characteristics of this neighborhood, the approval of neighbours and other local businesses, the landlord's approval, and other important regulatory and policy issues discussed below.

Section 573 of the *Vancouver Charter* [SBC 1953], Chapter 55, Part XXVII, is the guiding section pertaining to appeals to the Board of Variance. The section states:

573. (1) The Board shall hear and determine appeals:

- a) by any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning by-law;
- b) by any person who alleges that the enforcement of a zoning by-law with regard to siting, size, shape, or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development. In any such case the Board may, to the extent necessary to give effect to its determination, exempt the applicant from the applicable provisions of the zoning by-law;
- c) by any person who alleges that due to special circumstances or conditions the provisions of subsection (3) of section 568 will result in undue or unnecessary hardship to him;
- d) with respect to matters arising under subsections (4) and (5) of section 568;
- e) by any person aggrieved by a decision by any board or tribunal to whom Council has delegated power to relax the provisions of a zoning by-law.

Bearing the above Vancouver Charter Section 573, I wish to make an application to the City of Vancouver Board of Variance, under the Board of Variance By-Law No. 10200 and file a Notice of Appeal and state, in a simple manner, the following grounds of appeal:

- 1. Section 573(1)(a) – An appeal by any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning by-law;**
- 2. Section 573(1)(b) – An appeal by any person who alleges that the enforcement of a zoning by-law with regard to siting, siting, size, shape or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development.**

3. **Section 573(1)(c) – An appeal by any person who alleged that due to special circumstances or conditions the provisions of subsection (3) of section 568 will result in undue of unnecessary hardship to him;**
4. **Section 573(1)(e) – An appeal by any person aggrieved by a decision by any board of tribunal to who Council has delegated power to relax the provision of a zoning by-law.**

Please consider the following points regarding the Applicant's hardship.

Commitment to Compliance:

_____ is an experienced operator of cannabis retail storefronts and is licensed in another jurisdiction. He chose this particular location due to the fact that there are no other operating cannabis stores in the vicinity, and the premises had been vacant for some time. The landlord agrees with the proposed use and it will bring the building into better repair and will provide a measure of safety and security in the local area. A number of potential customers living in the local area have signed a petition and letters to allow the store to open. Copies of the letters and petition with signatures are attached. In addition, _____ is in good standing with his neighbouring retail stores and landlords. Further, supporters from the neighborhood will be voicing their support before the Board of Appeal.

Studies have shown that medical services relating to harm reduction are not only an incredibly vital and important function for certain vulnerable communities, but that individuals who utilize medical services of this nature typically live within 500 meters of the harm reduction site.¹ Cannabis stores, although classified as "recreational" by the Federal government, often operate as a form of harm reduction site which existed before the introduction of regulations surrounding the location of cannabis related businesses. The Applicant prides themselves on providing reasonable and dignified access to cannabis in the local community, and the prospect of leaving these local parties without access to the cannabis is troubling to say the least. Many of the local supporters have disabilities and physical limitations and need

¹ 2011, Marshall *et al* – Insite Analysis – more than 70% of daily users of Insite live within four city blocks (ie 500 meters) of the facility: "Reduction in overdose mortality after the opening of North America's first medically supervised safer injecting facility: a retrospective population-based study" Brandon DL Marshall, M-J Milloy, Evan Wood, Julio SG Montaner, Thomas Kerr. Published April 18, 2011 (online): www.thelancet.com Vol 377 April 23, 2011 pp 1429-1437.

access to -- its location and the fact that it is difficult to travel to another storefront easily.

Since signing this lease, the Applicant has built a very positive rapport with the businesses and residents in close proximity to it. At present, approximately 200 people have expressed support for the proposed use in this neighborhood because they are seeking a consistent supply of safe, high-quality cannabis. To adequately cater to these individuals, the Applicant will employ a small number of full and part-time staff that will continue to build meaningful relationships with the customers and surrounding community partners. The store is a discreet premises that has been vacant for a long time. The store has a low footprint and is not clearly visible to parties other than those who specifically wish to access cannabis there. This unique characteristic of the premises makes its non-compliance with the regulations, policies, and guidelines, a site-specific hardship for the Applicant.

The proposed storefront is located in an area of the City where low income families live. Forcing disabled members of this community to use public transport to travel to another cannabis store would create a great deal of hardship for those individuals. Customers hoping to be able to access cannabis safely and legally from the proposed storefront will be providing letters indicating this hardship, and will attend the hearing to speak about it as well. Many of the customers are from low-income families, and unfortunately many of them do not have full mobility, access to personal transportation, and are very limited financially. As a result, if they are forced to travel a long distance or take public transit to access cannabis, it will be costly and difficult for them. This unique characteristic of the proposed location constitutes a site-specific hardship which the Applicant submits should allow for a variance.

Further, the Applicant has endeavoured to build and maintain a strong relationship with these valued local individuals and businesses by proposing to offer them cannabis products at a reduced rate, thereby making access to cannabis more financially attainable. Preventing the Applicant from opening at this location will not only make it much more difficult for these local individuals to access cannabis, but would also significantly decrease the reasonable access in the area because if the Applicant is obliged to relocate there will not be any stores in the area at all. As a result, preventing the Applicant from opening would result in a complete lack of reasonable access in this part of the City.

When the City debated its MMRU bylaws they specifically cited a mandate of ensuring reasonable access within the City. Although now classed as “recreational” cannabis, preventing the opening of this location would utterly frustrate the City’s stated goals in regards to the communities affected by medical cannabis access issues. As such, this location is experiencing a site-specific hardship that means that although it is not in compliance with the letter of the law, it does comply with the spirit of the law and as such should be granted a variance.

Furthermore, the Applicant is a devout member of his church and works through his faith to help others. It is not in his character or faith to operate a business which would endanger children in any way whatsoever.

The Applicant’s location will support the local economy by involving other small businesses and supporting the local foodbank which is part of his charitable religious beliefs and nature. He operates a store in Castlegar British Columbia in compliance with the local bylaws there. His store in Castlegar is next to the main school bus drop off for elementary school children in the area and his entire business model is designed to ensure that children are not exposed to cannabis or his business and he is very respectful of rules relating to age and access to cannabis.

Financial and Relationship

Investments:

The Applicant has provided significant investments into the current property to ensure the needs of customers are met and to ensure that the building is safe, secure, and managed properly. If the Applicant is obliged to relocate, a great majority of these investments will be lost and the Applicant may not have the ability to financially recover. Further, the Applicant has fostered an excellent relationship with its landlord, which is difficult to establish because more often than not landlords have little interest in the activities of cannabis stores and do not appreciate the extra considerations a cannabis retail store must take, including enhanced security and complex Provincial regulations governing the store’s operations.

The Applicant’s Devotion to the Public:

The Applicant operates another retail storefront in another jurisdiction. The Applicant operates in perfect compliance with local bylaws as well as the strict Provincial regulatory scheme. Obviously the Applicant has never allowed minors to enter his store, and will not allow smoking, including “vaping” in or around the facility as per Vancouver’s By-Law, and will continue to adhere to all future municipal regulations. The Applicant does not advertise directly to the public, and always ensures the storefront is discreet and professional. This particular location is very discreet and only noticeable to individuals who are specifically seeking to purchase cannabis. As such, this proposed use is experiencing a site-specific hardship due to the proximity of the school. For clarity: the children will not be able to see this storefront and as such the 300 meter rule is a hardship and the Applicant should be granted a variance in this unique situation.

The Applicant has taken a proactive approach by consulting with local stakeholders to mutually agree on terms regarding his business practices and security systems to better enhance the safety of the community. The Applicant is supported by local landlords, business owners, and residents. The Applicant welcomes future meetings with all stakeholders to address any concerns they may have.

In conclusion, we are asking the City of Vancouver to grant a variance for the Applicant because, among other things, this proposed location has no other store nearby and the area has hundreds of sick, disabled, and financially challenged residents nearby that wish to rely on the Applicant for safe and reliable access to cannabis.

Further, the Applicant has built a positive role in the community by consulting with local parties in order to ensure that the business caters to the specific needs of local people and the Applicant has consulted with nearby businesses to increase the safety of the community. In addition, the proposed location meets all of the zoning regulations of a cannabis-related business and ensures all regulations are closely followed, other than the fact that a school is located less than 300 meters away, although as mentioned, that school’s students will not be able to see this store and will not be affected by it. The students are very unlikely to be near the store in any event as the roadway is busy and this side of the street. There are no other stores nearby. I kindly ask the City of Vancouver Board of Appeal to grant an appeal on the variance for the Applicant.

I am confident that the granting of the appeal on the variance will not be detrimental to the public welfare, or injurious to other property or improvements in the neighbourhood in which the business is currently located. The school will not be affected. The proposed variance will not impair the public health, safety, comfort, morals or general welfare of the inhabitants of the neighbourhood, or the City at large. This appeal and variance would in fact ensure that the City of Vancouver's stated goals regarding cannabis stores are protected and realized.

Finally, because no other cannabis store has been in operation in the area for the previous years, local residents are relying on the Applicant's store to open because of its small, friendly, discreet, and safe location which will finally allow local residents access to cannabis. Locals have stated that if the shop does not open, they will not be able to access cannabis legally. Simply put, the local residents are highly dependent on this particular location and its operator. Prohibiting the premises from opening will harm local customers, and will result in another vacant premises in a disadvantaged part of the city. We urge the Board to hear this appeal, and allow this vulnerable community its rights under the *Vancouver Charter*. The Applicant and his location are experiencing hardship due to the bylaw and as such apply for a relaxing of the bylaw to allow this premises to be used as a cannabis store.

We sincerely urge the Board to hear our appeal, and submit that in the interests of the City's mandate to assist residents in their reasonable access to cannabis it is of paramount importance that the Applicant be granted a variance to continue existing despite the proximity of a school because there is no other storefront in the area and many affected parties have expressed support for the proposed location.

Sincerely,

Counsel for the Applicant



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May 11, 2023
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Feb 22, 2023

RE 1410 East 49th Avenue
Development Application Number DP-2022-00911

Please be advised that the Director of Planning has Refused DP-2022-00911 on February 22, 2023, for the following reason(s):

- Refusal 1 – Objections Received; objections have been received from neighbouring property owners;
- Refusal 2 – Non-compliance – Regulations; the proposed development does not comply with the regulations of the Zoning and Development By-law that affect the site;
- Refusal 3 – Non-Compliance – Policies and Guidelines; the proposed development does not satisfactorily comply with the policies or guidelines that affect this site;
- Refusal 4 – Unsatisfactory – Proposed Use; the proposed use is unsatisfactory at this location;

You may be eligible to appeal this decision to the Board of Variance within 30 days of the date of this letter. For more information please contact the writer.

Yours truly,

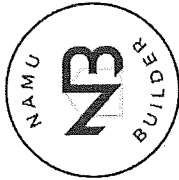


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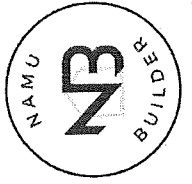
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1410 E. 49TH AVENUE
FLOOR PLAN WITH PROPOSED PARTITION WALL ADDITION

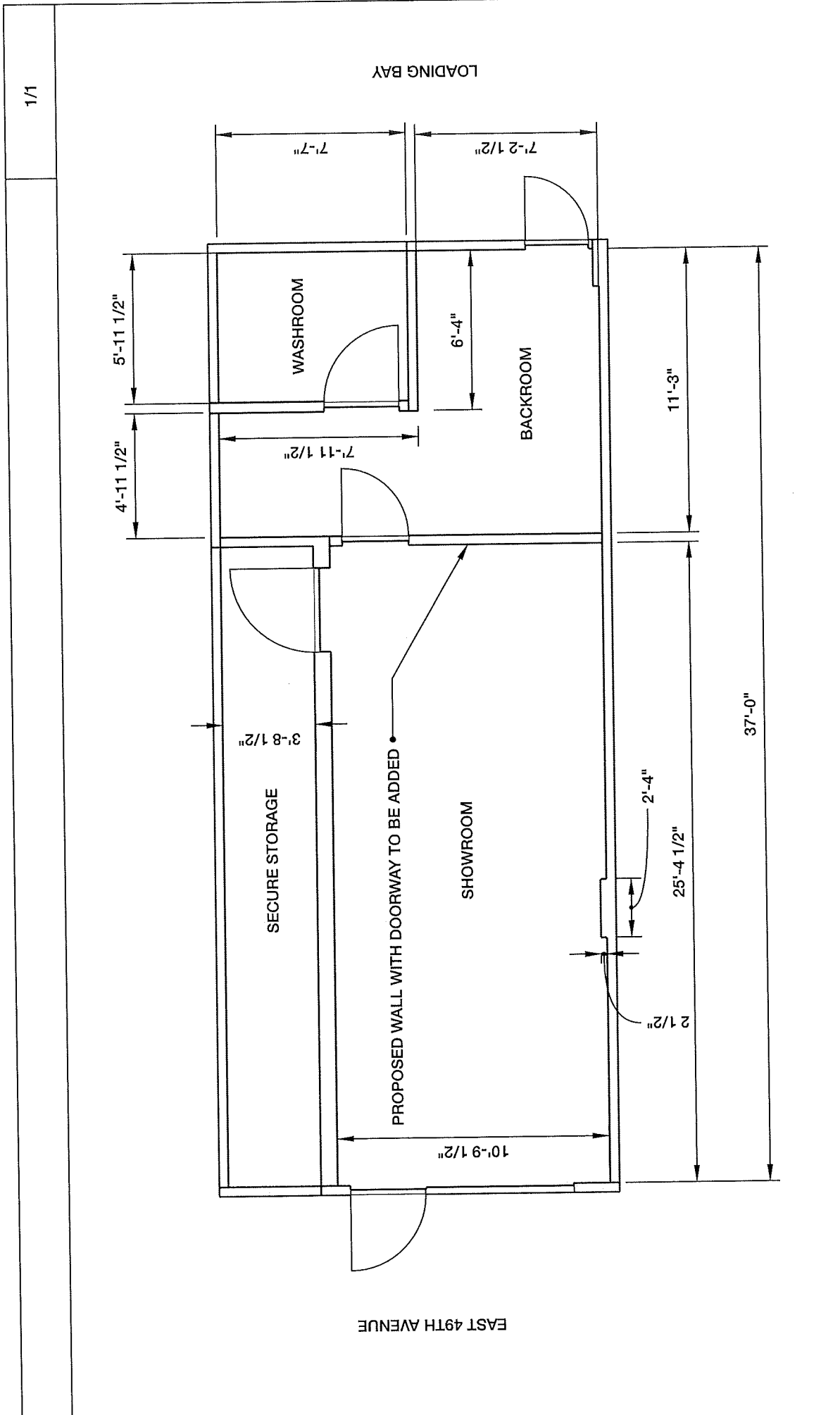
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