
BOARD OF VARIANCE / PARKING VARIANCE BOARD
APPEAL DECISION

Appeal No. Z35906 - 3378 Vanness Avenue (3362 Vanness Avenue)

Appeal Section: 573(1)(a) - Appeal of Decision (Cannabis Retail Store)
Legal Description: Lot 5, Block 8, District Lot 264A and Plan 1991.
Lot Size: Irregular Lot.
Zone: CD-1 (201)
Related By-Law Clause: Section 11.6

Appeal Description:

Appealing the decision of the Director of Planning who refused Development Application No. DP-2021-00722 and a request to permit interior alterations and to change the use of approximately 683 sq. ft. from a Beauty Salon to a Cannabis Store, in this existing mixed-use building on this site.

Note: Proposed new development at this site includes No translucent or opaque film, artwork, posters, shelving, display cases or similar elements are to be installed on or directly outside or inside of the approved glazing frontages.

Development Application No. DP-2021-00722 was refused for the following reasons:

-The proposed development does not comply with the regulation of the Zoning and Development By-law that affect the site.

-Objections have been received from notification of neighbouring property owners.

Name of Appellant(s): Joe Dul Le, Aaron Sinnathamby
Arcannabis Enterprises (BC) Inc.
DBA: Arcannabis Store
Unit 810 - 789 West Pender Street
Vancouver, B.C. V6C 1H2.

This appeal was heard by the Board of Variance on February 08th, 2022 and was **DISALLOWED**

Board's summary and decision based on the following:

- Proposed site is approx. 30m to St. Mary's Elementary School (City's distance calculations)
- Proposed site is approx. 130m to Collingwood Neighbourhood House (City's distance).
- Proposed site is approx. 160m to Strong Start Learning Center (City's distance).
- Over 80+ Letters (emails) in opposition received from the Board's postcard notification
- The Board was in agreement with the City's Director of Planning, and appeal was denied.
- The Board's decision was 4-1 decision (not a majority vote, and appeal was disallowed).

Note: Unless otherwise ordered by the Chief Building Official in writing, the owner(s) **must obtain a Development & Building Permit(s) within one-year from the hearing date** (on successful appeals / allowed appeals).

Signed: 

Secretary to the Board of Variance

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Discussion:

Mr. Aaron Sinnathamby and Mr. 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 the staff they have hired all live around the neighbourhood. There is a need for recreational cannabis use. There are no complaints in the last two years. He was not able to obtain support from the Schools nearby. They have purchased this building believing that it is over 300 meters from a School. A significant number of letters seems to be against cannabis in general and not their store.

The Director of Planning's Representative

Mr. Bosnjak's initial comments were that the application was refused due to regulations. They are 20 meters from an Elementary School, 173 meters from Collingwood Neighbouring House, 170 meters from Collingwood Neighbouring School, and 160 meters from Strong Start Center. They received 42 objections from enquiries. The applicant have experience working with City of Vancouver, and they are aware of how calculations work. The Director of Planning does not see a hardship, and strongly oppose the appeal.

The Board Chair stated that the Board's site office received no (0) letter in Support and eighty one (81) 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.

Javier Pacheco-Raguz (3706-888 Canarvon Street, New Westminster) is not in support of the appeal

Brian Yan Muk (3380 Vanness Avenue) is in support of the appeal

Barry LaFond (320 Salter Street New Westminster) is in support of the appeal

Henrique Merzari (3338 Austrey Avenue) is in support of the appeal

Cale Simpson (1209 East Broadway) is in support of the appeal

Final Comments:

Mr. Bosnjak's final comments were that the Director Of Planning refused this due to the dispensary being within 300 meters of an Elementary School, Collingwood Neighbouring House, Collingwood Neighbouring School, and Strong Start Center. They also refused this due to objections received. They do not see a hardship, and strongly oppose to this appeal.

The appellant's final comments were that a significant number of complaints from people are not from the immediate vicinity due to it being a Catholic School.

This appeal was heard by the Board of Variance on February 08th, 2022 and was DISALLOWED.

Board's summary and decision based on the following:

- Proposed site is approx. 30m to St. Mary's Elementary School (City's distance calculations)
- Proposed site is approx. 130m to Collingwood Neighbourhood House (City's distance).
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NOTE: AUDIO recording of this appeal is available upon request and please contact the Secretary to the Board of Variance at (604) 873-7723

ADJOURNMENT

The meeting ended at **3:31pm.**

The Chair



November 3, 2021

Aaron Sinnathamby
Arcannabis Enterprises (BC) Inc.
8265 Main
Vancouver, BC V5X3L7

RE 3378 VANNESS AVENUE, Vancouver, BC V5R 5A8
Development Application Number DP-2021-00722

Please be advised that the Director of Planning has refused DP-2021-00722 on November 3rd, 2021, for the following reason(s):

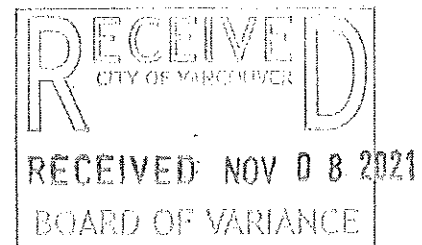
- Zoning and Development By-law Regulations.
- Objections Received from notification.

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,

A handwritten signature in cursive script that reads "Justin Neal".

Justin Neal
justin.neal@vancouver.ca
(604) 829-9626





January 10, 2022

**Att: Mr Louis Ng, Secretary
Vancouver Board of Variance
Room 112, 1st Floor, City Hall
453 West 12th Ave,
Vancouver, BC V5Y1R3
bov@vancouver.ca / 604-873-7723**

Appeal Basis – BOV - 3378 Vanness Ave - DP-2021-00722 - Letter of Hardship

January 10, 2022

Dear Secretary Ng,

**RE: Arcannabis,
DP-2021-00722 (BOV Application) 3378 Vanness Ave, Vancouver,
British Columbia**

My name is Jack Lloyd. I am a barrister and solicitor based on Toronto, Ontario. I am counsel to Arcannabis and Aaron Sinnathamby and their proposed cannabis retail store located at 3378 Vanness Ave., Vancouver, British Columbia (hereinafter the “Applicant”) with respect to the Board of Variance proceedings with the City of Vancouver, under Board of Variance By-Law No. 10200.

I am retained on behalf of the Applicant, to assist their team with preparing and making the necessary appeal application to the Board of Variance (hereinafter the “BOV”) regarding the above captioned matter and the Development Permit number and application.

It is my understanding that the Board of Variance hearing is scheduled for February 8, 2022. It is my understanding based on email correspondence that the agreed upon due date for materials is January 10, 2022. I will be in attendance via WebEx as will my client and their supporters at the appropriate time. Materials regarding their application are also available for the BOV to review in advance. It is my understanding that these materials should be made available one month in advance of the hearing date and this has been agreed to be January 10, 2022.

The Applicant storefront exists in compliance with all City of Vancouver licensing regulations regardless of whether such license is issued, and the Applicant will respect the appeal and application process. The storefront



does not currently operate and has been leased and built out in good faith for the purpose of a legal storefront for recreational cannabis licenced by the Province of BC. The Applicant purchased this building for the purpose of opening this retail storefront and is experiencing hardship as a consequence of the zoning bylaw.

The Applicant will be providing all supporting documentation, including letters from their landlord, neighbours, surrounding businesses, and affected medical patients, and will furnish them to your office in good time prior to the BOV appeal appearance on September 8, 2020. Those letters are included in this package.

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,

A handwritten signature in dark ink, appearing to be 'JL', written in a cursive style.

Jack Lloyd
Barrister & Solicitor
43 Front Street East, Suite 400
Toronto, ON M5E1B3
Tel. 647-235-3972
Fax. 416-352-5524
Email: jacklloydman@gmail.com / info@lloydllawcorporation.ca

Counsel to the Applicant



Arcannabis Proposed Storefront (3378 Vanness Avenue)
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. Furthermore, these storefronts must be 300 meters away from any school.

Arcannabis 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, Arcannabis should be permitted to open in its current location because no other cannabis business has received a Development Permit at present within 300 meters of the proposed location. There are proposed locations which are within 300 meters but those businesses have not been licenced, granted development permits, nor have they opened and operated. As a result, the underlying purpose and motive of the 300 meter rule is not undermined by the existence of Arcannabis's proposed storefront, nor does it exacerbate any clustering issue faced by the City.

Furthermore, the school which is alleged to be within 300 meters of the proposed location is located at 5239 Joyce Street, Vancouver, BC V5R4G8. It is the position of the Applicant that the school is actually 400 meters away from the proposed storefront based on walking distance and common sense measurements. Furthermore, the Applicant canvassed the neighborhood and received overwhelming support regarding the proposed storefront location. The letters of support are attached to the materials and provide clear evidence that in fact the neighborhood supports the proposed use, and that students from the school do not traverse near Vanness Avenue nor do they pass anywhere near the proposed storefront. As a result, the underlying motivations behind the 300 meter rule are not a relevant factor for the proposed storefront location and relief should be granted. Ultimately, based on the October 2021 City of Vancouver



correspondence, the amendment is purely to use, and has no genuine connection to the underlying purposes of the 300 meter rule. The Applicant specifically purchased this building in the belief that it complied with the bylaw and was appropriately located. The Applicant is experiencing hardship as a consequence of the local area in which although it appears to be farther from the school, it is, from a property line to property line measurement perspective, too close to the school, although from a common sense geographical perspective, it is farther away.

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 Arcannabis's hardship.

Arcannabis's (3378 Vanness Avenue) Commitment to Patients:

Arcannabis's location at 3378 Vanness Avenue was previously a hair salon. That business is closed and the premises has been closed for some time. Arcannabis then then purchased the property believing it to be in compliance with the City of Vancouver and Province of BC's rules and regulations concerning cannabis retail storefronts. Unfortunately, the premises is considered to be non-compliant because of the bylaw (school proximity). Furthermore, based on the Board's rulings, it may also be closer than 300 meters away from other proposed cannabis retail locations. Arcannabis has a long history in the city and currently has approximately 500 former patients in this area who relied on their former store in the area for reasonable and dignified access to medical cannabis. A number of patients, clients, neighbors, and neighboring businesses have signed letters to allow the new proposed store to open. Copies of the petition and letters with signatures are attached. In addition, Arcannabis is in good standing with the neighbouring retail stores. Further, a great many patients will be



voicing their support before the Board of Appeal although some are unable to participate due to lack of access to WebEx or computers and internet. It is important to Arcannabis that they express to the BOV the fact that a number of their customers/ patients rely on them as a business in the immediate area of the store and this was a crucial factor in their decision to lease the property and make efforts to open and operate a legal retail storefront here on Vanness. The discovery that the school is considered to be less than 300 meters away from this proposed location at 3378 Vanness Avenue was not only a surprise to the Applicant, but also troubling given the fact that a simple google search indicates that the property is over 400 meters away from the school if viewed from door to door and simple common sense indicates that no children from the school travel south and east from Joyce Street and therefore there is no real risk of children from the school being affected by the proposed location.

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 Many patients in the area have disabilities and physical limitations and need access to 3378 Vanness Avenue specifically because of its location.

Since the beginning of operating in the neighbourhood, Arcannabis has built a very positive rapport with the businesses and residents in close proximity to it. Approximately 500 patients regularly rely on Arcannabis for a consistent supply of safe, high-quality botanical medicine. To adequately cater to these patients, Arcannabis employs a small number of full and part-time staff that strived to build meaningful relationships with the patients and surrounding community partners.

Arcannabis's location and current 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 to access medicine would create a great deal of hardship for those individuals. Patients from the dispensary have provided letters indicating this hardship, and will attend the hearing to speak about it as well. Many of Arcannabis's

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.



patients are from low-income families, and unfortunately most of them do not have full mobility, access to personal transportation, and are very limited financially and may not have access to WebEx in order to participate in the BOV during Covid. As a result, if they are forced to travel a long distance or take public transit to access their medicine, it will be costly and difficult for them.

Further, Arcannabis (3378 Vanness Avenue) has endeavoured to build and maintain a strong relationship with these valued patients by offering them cannabis products at a reduced rate, thereby making access to their medicine more financially attainable. Removing Arcannabis from this location will not only make it much more difficult for these patients to access their medicine, but would also significantly decrease the reasonable access in the area because if Arcannabis is obliged to relocate there will not be any dispensaries in the area or if there are, then patients have advised that due to the sensitive nature of accessing cannabis for medical purposes, they may not use those other stores. As a result, denying Arcannabis the ability to open would result in a complete lack of reasonable access in this part of the City. When the City debated its original MMRU bylaws they specifically cited a mandate of ensuring reasonable access within the City. Denying Arcannabis would utterly frustrate the City's stated goals in regards to the community affected by medical cannabis access issues.

Furthermore, Arcannabis strives to operate not only in compliance with the Provincial rules but also in compliance with the operational rules that were put forth by the Canadian Association of Medical Cannabis Dispensaries (CAMCD) when they sought to create rules for providing reasonable and dignified access to medicinal cannabis in the City of Vancouver when the MMRU was introduced. Arcannabis intends to operate this new storefront in compliance with the Provincial regulations.

Arcannabis purchased this building specifically because it will allow them to operate for the foreseeable future without risk of unforeseen changes in operation, eviction, or the sale of the property.

Arcannabis (3378 Vanness Avenue) – Financial and Relationship Investments:

Arcannabis (3378 Vanness Avenue) has provided significant investments into the current property to ensure the needs of patients and customers are met. If Arcannabis is obliged to relocate, a great majority of these investments will be lost and Arcannabis may not have the ability to



financially recover. They specifically purchased this property on the belief that it was 400 meters away from the school based on a common sense measurement. Arcannabis fostered an excellent relationship with the former landlord and has a letter of support from the former landlord as well as from other local businesses and neighboring business owners and landlords. Arcannabis purchased the building which is a significant endeavour and constitutes a hardship if the use is not viable. Such relationships are difficult to establish because more often than not, landlords have little interest in the activities of tenants especially cannabis store tenants and do not appreciate the extra considerations a medical cannabis retail dispensary club must take, including enhanced security, and certain issues regarding odor and loitering and interior design. The fact that Arcannabis has the support of its landlord is strong evidence of their good character and strong interest and relationship with the community and neighbourhood on that stretch of Vanness Avenue which is a typically underserved part of the city.

Arcannabis's Devotion to the Public:

Arcannabis has never allowed minors to enter the store, and we do 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. Arcannabis does not advertise directly to the public, and always ensures the storefront is discreet and professional.

Arcannabis has taken a proactive approach by consulting with local stakeholders to mutually agree on terms regarding its business practices and security systems to better enhance the safety of the community. Arcannabis 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 Arcannabis because, among other things, Arcannabis has hundreds of sick and disabled patients nearby that rely on them for safe and reliable access to alternative medicine. This constitutes a hardship.

Further, Arcannabis has built a positive role in the community by catering to the specific needs of patients and consulting with nearby businesses to increase the safety of the community. In addition, Arcannabis meets all of the zoning regulations of a cannabis business and ensures all regulations are closely followed, other than the fact that a school is technically too close, although as mentioned, it is the position of the Applicant that the school is



more than 300 meters away from the proposed storefront location and further based on the local traffic no children from that school walk anywhere near the proposed storefront. I kindly ask the City of Vancouver Board of Appeal to grant an appeal on the variance for Arcannabis on the basis of hardship.

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 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 and also that the medical concerns of the neighborhood are met by a business owner that is trusted by vulnerable members of the community.

Finally, because no other cannabis store has been in operation in the area for the previous four years, patients have come to rely on Arcannabis because of its small, friendly, discreet, and safe environment with a low footprint in the area. Patients have stated that if the shop is unable to open then they would be uncomfortable accessing their medical cannabis either through a recreational store operated by someone other than Arcannabis, or through another medical cannabis dispensary. Simply put, the patients who rely on Arcannabis are highly dependent on Arcannabis in the neighborhood. Refusing the Applicant the ability to open would harm these patients, and we urge the Board to hear this appeal, and allow this vulnerable community its rights under the *Vancouver Charter*.

We sincerely urge the Board to hear our appeal, and submit that in the interests of the City's mandate to assist patients in their reasonable access to cannabis it is of paramount importance that Arcannabis be granted a variance to open a store at this new location in light of the fact that there is no other storefront open in the area and the school is quite far from the proposed location and its students simply do not walk or travel anywhere near the proposed storefront.

Sincerely,

Counsel for Arcannabis

Jack Lloyd, Barrister & Solicitor