



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

**10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
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Date: June 16, 2016
Project Number: 219871428-001
File Number: SDAB-D-16-137

Notice of Decision

- [1] On June 1, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 4, 2016. The appeal concerned the decision of the Development Authority, issued on April 28, 2016 to refuse the following development:

Increase the building Height of a General Industrial building.

- [2] The subject property is on Plan 1220538 Blk 1 Lot 2, located at 1021 - Hayter Road NW, within the IM-Medium Industrial Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A Development Permit Application, including the plans of the proposed Development;
 - The refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions, including Community Consultation.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellants, Greg Klak and Stephen Laurie*

- [6] The Appellants were granted a Development Permit, with a variance in Height, for a General Industrial Building, by the Board in September 2015. Unfortunately, as the design process unfolded, it became apparent the building required additional Height, approximately 1 meter per floor.
- [7] There are three key reasons why the Appellants require additional Height for the proposed development.
- (a) Operability – the elevations must be a specific height due to the vertical stack up of equipment, in which products flow from the upper floors to the lower floors.
 - (b) Serviceability – vertical space is needed to routinely and safely access equipment for servicing.
 - (c) Constructability – the contractor needs extra space to install and erect complicated layers of utilities, piping, and duct at correct levels.
- [8] If the Appellants had full information in September, they would have asked for a 9.4 metres variance to maximum allowable Height when they originally appeared before the Board.
- [9] The Appellants did explore all other alternatives prior to reappearing before the Board. However, they were cautioned that they would not be satisfied with the final product without the additional Height.
- [10] Upon questioning from the Board, the Appellants advised that the company produces active pharmaceutical ingredients through a series of chemical steps. This particular development is a custom manufacturing operation involving a spray dryer which enables enhanced air handling and chemical isolation.
- [11] There are numerous buildings on the subject Site, including: a lab; warehouse; engineering and maintenance building; lunchroom; and, an administration building. The Site also includes another process building, Tower One. It is approximately 20 years old. Tower One is over 22 metres in Height. They are unable to locate the Development Permit for Tower One.
- [12] There appears to be some other over-height buildings in the vicinity of the subject Site including large storage tanks on an adjacent property.

[13] The Appellants canvassed the three adjacent neighbours who would be the most affected properties. These neighbours supplied positive input on the previous appeal and currently they all support the newly proposed Height. No one else submitted any letters, nor attended in opposition.

ii) Position of the Development Officer, Paul Kowal

[14] The Development Officer agreed with the three reasons offered by the Appellants and felt this situation met his hardship test, as set out in Section 11.4 of the Edmonton Zoning Bylaw.

[15] Pursuant to Section 11.4 of the Edmonton Zoning Bylaw, the Development Officer has no authority to vary Height. He would have granted the variance had he been allowed to do so.

[16] After the Board issued the first decision on the proposed building, the Development Officer did inquire with no success as to the reasoning behind the 18.0 metres Height restriction in the IM Medium Industrial Zone. In his opinion, a Development Officer should be allowed to grant a Height variance for certain industrial properties.

[17] The Development Officer could not confirm the exact Height of other structures in the area as the records do not exist or are buried in City archives and not readily available. He believed the building was an architectural advancement and would be beneficial to people driving by. He felt the building itself was iconic and constituted Landscaping for the Site.

[18] The Development Officer confirmed that this application is for an increase in Height for the proposed development. The previous Development Permit issued by the Board will continue to apply as the two permits are linked. Specifically, all the conditions imposed by the Board under the first permit will remain in force and effect. He has included a list of all the conditions which he suggests should be attached to the Development Permit currently before the Board.

[19] The footprint of this proposed development did increase slightly. There will be significant changes to the construction drawings.

iii) Rebuttal of the Appellants

[20] The Appellants agreed that the footprint of the proposed development only changed marginally.

[21] The Appellants are prepared to abide by the conditions suggested by the Development Officer.

Decision

[22] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

- 1) All access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction. Reference Section 53(1).
- 2) Access from the site to Hayter Road exists. Any modification to the existing accesses requires the review and approval of Transportation Services.
- 3) The proposed gate must not swing out over road right-of-way. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.
- 4) Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the *Edmonton Zoning Bylaw*. The boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
- 5) All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the *Environmental Protection and Enhancement Act* and the regulations pertaining thereto.
- 6) The development shall comply to the performance standards for the IM District in accordance to Section 57 of the *Edmonton Zoning Bylaw*. (Reference Section 410.4(4)).
- 7) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Notes:

- i) Signs require separate Development Applications.
- ii) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

iii) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

- (1) The maximum allowable building Height of 18.0 metres per Section 420.4(4) is varied to allow an excess of 9.4 metres, thereby increasing the maximum allowable building Height to 27.4 metres.

Reasons for Decision

- [23] The proposed development is a Permitted Use in the IM Medium Industrial Zone.
- [24] The proposed development is subject to a prior Board decision, in which the Board granted a variance of 5.4 metres in the maximum allowable building Height, from 18.0 metres to 23.4 metres. However, as the design process unfolded, it became apparent that an additional height of 1 metre per floor (for a total of 4.0 metres) was required to construct, operate and service the development. Without the additional 4.0 metres increase in Height, the building would be unable to serve its proposed function.
- [25] Over-height buildings are not uncharacteristic of the area, which includes structures which exceed the 18.0 metres maximum allowed Height and are similar to the proposed development with respect to Height.
- [26] The Development Officer submitted that, but for Section 11.4 of the Edmonton Zoning Bylaw which precludes his variance power with respect to Height, he would have approved the variance. The Board accepts his opinion that the requested variance in Height carries no adverse impact (given current site conditions including its location and proximity to other buildings) and that the proposed development represents an architectural improvement to the area.
- [27] The Appellants discussed the required variance with three most affected neighbouring business owners who had no concerns with the proposed Height of 27.4 metres.
- [28] There were no letters of opposition received and no one appeared to oppose the proposed development.
- [29] The Board accepts the submission of the Development Officer that the conditions from the previous Board decision to continue to apply and notes that the Appellants consent to all recommended conditions suggested by the Development Officer. The Board is

satisfied that the conditions imposed will mitigate the potential adverse effects, if any, from the proposed development.

- [30] For the above reasons, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge, Ms. K. Thind, Mr. A. Bolstad, Mr. K. Hample

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: June 16, 2016
Project Number: 167566047-029
File Number: SDAB-D-16-138

Notice of Decision

- [1] On June 1, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 10, 2016. The appeal concerned the decision of the Development Authority, issued on April 21, 2016 to approve the following development:

Leave as built 4 Dwellings of Row Housing (Interior Side Setback from 2.98 metres to 2.87 metres & Flanking Side Setback from 2.5 metres to 2.62 metres) and a mutual rear detached Garage (Interior Side Setback from 0.91 metres to 0.49 metres; Flanking Side Setback from 2.5 metres to 2.66 metres)

- [2] The subject property is on Plan RN46 Blk 21 Lot 11, located at 12421 - 115 Avenue NW, within the RF3-Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and West Ingle Area Redevelopment Plan apply to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The approved Development Permit;
- The Development Officer’s written submissions; and
- Comments of opposition.

- [4] The following exhibit was presented during the hearing and form part of the record:

- Exhibit A – The Respondent’s written submission.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] Prior to the hearing, the Board raised a jurisdictional issue regarding the time at which the appeal was filed. The Board explained to the Appellant that it is constrained by the 14-day limitation period prescribed by Section 686(1)(b) of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“*Municipal Government Act*”).

Summary of Hearing on Preliminary Matter

i) Position of the Appellant, Laura Gallant

[7] The Appellant did not remember exactly when she received notice of the Development Permit, but remembers filing her appeal approximately within 12 days of receipt.

ii) Position of the Development Officer, Joselito Angeles

[8] The Development Officer stated that notices are typically mailed out within 3 days of the decision date.

Decision

[9] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act.

Reasons for Decision

[10] Section 686(1)(b) of the Municipal Government Act, states (in part) that a development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days, after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

[11] The Board accepts the evidence of the Appellant that her appeal was filed within 12 days of receipt of notice of the Development Permit.

Summary of Hearing

ii) Position of the Appellant, Laura Gallant

[12] The Appellant raised three areas of concern: construction practices, fire hazards and retroactive approval.

[13] The Appellant acknowledged that the first issue, construction practices, was not relevant to the merits of granting a variance.

[14] In regards to the second area of concern, the Appellant is worried about a fire hazard with the garage being too close to the neighbouring property. If all developers are granted variances in side Setbacks, the potential for a fire hazard increases even further. This is compounded with the fact that many of the houses in the neighbourhood are old.

- [15] Lastly, the Appellant is concerned that the development should have been approved prior to it being built.
- [16] Upon questioning from the Board, the Appellant conceded that the impact of the variances is minimal.
- [17] Upon a review of the conditions imposed with regarding to fire proofing, the Appellant acknowledged being less concerned about that issue.
- [18] The Appellant is a Board member of the Inglewood Community League, but is not at the hearing speaking on their behalf. The League is neutral on the proposed development. However, as a member of the Inglewood Community League, she fields complaints and concerns and, therefore, felt a responsibility to ensure her personal concerns and those of other neighbours were put on record before the Board.
- [19] She lives approximately three houses from the proposed development along the blockface. The person who wrote the comments of opposition lives beside her. There is another property under development closer to the subject Site. Then the immediately adjacent neighbour to the proposed development is a tenant. She has heard nothing from that neighbour.

ii) Position of the Development Officer, Joselito Angeles

- [20] The Development Officer explained that this Development Permit application is a “Leave-as-built” application. The Respondent had Development Permit approval for plans that complied with the development regulations to which variances are now being requested at this hearing. However, due to construction errors, the siting of proposed development did not conform to the prior approval. These errors were discovered when the property was surveyed in anticipation of units being condominiumized and sold.
- [21] Upon review of the Building Location Plan with the Board, the Development Officer conceded the Accessory building is located 0.71 metres from the Side Lot Line, necessitating a variance of only 0.19 metres.
- [22] The Development Officer could not confirm the width of the eaves for the Accessory building, but conceded with the change in the calculation of the distance from the Accessory building to the Side Lot Line, the variance in the projection of the eaves may also have changed. The eaves can come within 0.44 metres of the interior Side Lot Line (0.90 metres required Setback – 0.46 metres allowable projection).
- [23] Since the accessory building existed, prior to rendering a decision, the Development Officer sent the application to the Safety Codes Officer for review. As part of the existing Building Code approval, the Respondent was required to add significant fire proofing measures.

- [24] Upon further review of the plans with the Board, the Development Officer also conceded the Principal building required an additional, previously unidentified variance of 0.13 metres in the minimum required interior Side Setback. This was due to a change in the Edmonton Zoning Bylaw on March 14, 2016, after the proposed development was originally approved. However, given the orientation of the Principal building on the lot, this variance diminishes towards the west property line. Further, in the Development Officer's opinion, there was enough landscaping provided per the original approval to mitigate this variance.
- [25] Upon a review of the plans, the Development Officer conceded the Scope of application should read that the flanking Side Setback went from 2.5 metres to 2.53 metres, and not to 2.62 metres. However, he also confirmed that the new flanking Side Setback of 2.53 metres shown on the Building Location Plan did not necessitate a variance.
- [26] In respond to questions from the Board, the Development Officer stated they do not have the ability to levy fines for errors in building placement. In his opinion, having to add extra fireproofing material was a cost in itself. If the Respondents do not obtain approval, the development may have to be removed or altered.

iii) Position of the Respondents, Ulco Franken and Jay Herrick

- [27] The Respondents submitted Exhibit A in support of the Development Permit Approval.
- [28] The variances were required solely because of construction errors. The contractors were being overly careful on the Front Setbacks because of the requirement in the Mature Neighbourhood Overlay to be uniform with the block face average for the neighbouring properties. These siting errors did not become evident until the survey was completed. To move the structures would be impossible and they would suffer a significant financial loss. There are pending sales on the units that cannot be finalized until the plan is registered.
- [29] The Respondents have implemented all the additional fireproofing measures, at significant cost.
- [30] Even with a deficiency in the interior Side Setback, there is still ample access. Workers were able to paint the fence and install the newly required fireproofing measures.
- [31] The Respondents implemented measures for rain run-off to prevent any issues with the interior neighbour including a grass/rock swale and a downspout on the southeast corner of the garage directing roof run off towards the alley. They are amenable to adding an additional downspout on the northeast portion of the garage towards the alley.

[32] According to their drawings, the horizontal width of the eave on the Detached Garage along the interior Lot Line is 0.30 metres. Based on the distances noted in the Building Location Plan, they confirmed that the distance from the eave to the Side Lot Line is 0.41 metres (0.71 metres – 0.30 metres). The eave can project 0.46 metres into the required 0.90 metres Setback; i.e. come within 0.44 metres of the Side Lot Line. The eave projects 0.49 metres and comes within 0.41 metres of the property line. Therefore, to leave as-built, the eave requires a variance to permit an additional projection of 0.03 metres in to the required interior Side Setback.

iv) Rebuttal of the Appellant, Laura Gallant

[33] Upon hearing the evidence from both the Development Officer and Respondents, the Appellant's concerns for fire hazard have been minimized.

[34] She also has a better understanding of the Development Permit process and the events that preceded this hearing. In particular, she now realizes that the Respondents did not construct without any permission from the City. Development Permits were issued before construction; however, a new Development Permit was required due to the siting errors which occurred during construction.

Decision

[35] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED, subject to the following CONDITIONS:

1. The applicant must install an additional downspout at the northeast corner of the Detached Garage and adjust existing eavestroughing to facilitate proper drainage through that downspout and toward the lane.
2. The Driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other service utilities.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. A variance of 0.13 metres reducing the minimum required interior Side Setback, from 3.0 metres to 2.87 metres, as per Section 140.4(13)(d) of the *Edmonton Zoning Bylaw*.
2. A variance of 0.19 metres reducing the minimum required distance from the Accessory building to the Side Lot Line, from 0.90 metres to 0.71 metres, as per Section 50.3(4)(b) the *Edmonton Zoning Bylaw*
3. A variance of 0.03 metres increasing the maximum allowable eave projection from 0.46 metres to 0.49 metres into the 0.90 metres required Setback, as per Section 44.1(b) of the *Edmonton Zoning Bylaw*.

Reasons for Decision

- [36] The proposed development is a Permitted Use in the RF3 Small Scale Infill Development Zone and requires three variances related to the interior Side Setback regulations.
- [37] The Appellant initially raised three areas of concern: construction practices, fire hazards and retroactive approval.
- [38] However, at the outset of the hearing, the Appellant acknowledged that concerns about construction practices and site conditions during construction are not relevant to the merits of granting variances to the required interior Side Setbacks for the proposed development.
- [39] In addition, the Appellant agreed that her second concern about potential fire hazard has been adequately addressed by the imposition of conditions required by the Safety Codes Officer which deal with the proximity of the detached garage to the interior Side Lot Line. The Board acknowledges the submission of the Development Officer that the additional conditions suggested by the Safety Codes Officer will address any potential fire concerns raised by this variance. The Board also notes that the Respondent agreed to these conditions and has already implemented them. However, the Board finds that these requirements have been imposed by Safety Codes Officers pursuant to their enabling legislation and are beyond the purview of this Board in any event.
- [40] The Appellant now understands why the variances are being sought retroactively post construction. The Row Housing and Detached Garage were initially approved in May 2015 as Permitted Uses. The errors in placement of the Row Housing and Detached Garage were not found until construction was completed as the surveyor prepared the condominium plan for registration. The Board finds that the retroactive aspect of this application to “Leave-as-built”, in and of itself, is irrelevant to the issue of the potential impact of the three requested variances which this Board must evaluate.
- [41] The most affected immediately adjacent property owner, who is the one most directly impacted by any variances to the Setbacks along the interior Lot Line, did not provide any written submissions or appear to oppose or support development.
- [42] The Board accepts the submission of the Appellant that the Community League is neutral with respect to the development.
- [43] The Board accepts the revised calculations of the parties based on the Building Location Plan submitted with the Development Permit Application and the information provided by the Respondents that the eaves on the Detached Garage project 0.30 metres from the side of the Detached Garage. Therefore, based on the evidence before it, the Board approves a 0.19 metres variance to the required interior Side Setback for the Detached Garage and consequently a 0.03 metres increase to the allowable projection of the eaves into the required interior Side Setback for the Detached Garage.

- [44] The Board has imposed a condition requiring the addition of a downspout on the northeast corner of the Detached Garage and necessary rerouting of runoff along the eavestroughs to reduce potential drainage impact of a variance to the interior Side Setback for the Detached Garage. The Respondents agreed to the imposition of this condition.
- [45] The Principal building (four Dwellings of Row Housing) met the required Side Setback when the development was initially approved; however a 0.13 metres variance is now needed for the as-built permit given the actual location of the Principal building as the required Setback was increased from 1.2 metres to 3.0 metres in revisions to the Edmonton Zoning Bylaw which came into effect on March 14, 2016. The Board accepts the Development Officer's opinion that landscaping required under the original development permit will reduce any impact of this variance and will reduce overlook into the rear yard of the adjoining property. The Board notes that the Appellant had no objection to this variance and agreed it was of minimal impact.
- [46] For the reasons outlined above and with the noted conditions, the Board finds that the development with three variances will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Kathy Cherniawsky
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge, Ms. K. Thind, Mr. A. Bolstad, Mr. K. Hample

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 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
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3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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Date: June 16, 2016
Project Number: 180111336-001
File Number: SDAB-D-16-114

Notice of Decision

- [1] On June 1, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on April 8, 2016. The appeal concerned the decision of the Development Authority, issued on March 31, 2016 to refuse the following development:

Install 3 Fascia On-Premises Signs (Spasation), existing without permits

- [2] The subject property is on Plan I Blk 68 Lots 13-14, located at 10358 - 82 Avenue NW, within the DC1 Direct Development Control Provision Zone. The Whyte Avenue Commercial Overlay and Strathcona Area Redevelopment Plan apply to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A Development Permit Application, including the plans of the proposed Development;
 - The refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellant, Hasoon Rahal on behalf of Spasation Spa and Salon*

[6] The Appellant sent correspondence to the Board advising that he was not able to attend the hearing and asked the Board to proceed with the hearing in his absence and make a decision based upon the written submissions. The Appellant's main argument was that the previous business had permits for the three signs and the only thing that had changed was the wording on the signs.

ii) Position of the Development Officer, Jeremy Folkman and Heritage Officer, Scott Ashe

[7] The subject Site is within the DC1 Historical Commercial Direct Development Control District under the Strathcona Area Redevelopment Plan.

[8] The Development Officer referred the Board to its jurisdiction under Section 641(4) of the Municipal Government Act, RSA 2000, c. M-26, which states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[9] In this case, it was the opinion of the Development Officer that he followed the directions of City Council and the Board has no authority to allow the appeal.

[10] The Appellant was required to submit a new permit application because it was a new business.

[11] The Development Officer sent the application to the Heritage Officer pursuant to DC1, Section 5(h), which states "all Development Permits relating to exterior alterations, signs, renovation to existing buildings or new construction within this area will be reviewed by the Development Officer in consultation with the Heritage Officer."

[12] The proposed signage exceeded the maximum number allowable pursuant to DC1, Section 5(r)(i)(f)(8).

- [13] The Heritage Officer stated that prior to the DC1 being enacted, there was significant public consultation on the wording of that section. There was a concern regarding the proliferation of signage in the area and parties came to an agreement on the maximum number of Signs that were allowed.
- [14] The Board asked the Development Officer if he considered a variance pursuant to DC1, Section 5(s), which states:
- Notwithstanding the development regulations of this Provision, the Development Officer, in consultation with the Heritage Officer, may vary any regulation within this Provision if, in their opinion, such variances would not diminish the historical nature of a building or the area.
- [15] The Development Officer, in consultation with the Heritage Officer, considered a variance under this section, but declined to grant one because the building already has significant signage and these Signs are of a significant scale thus they would diminish the historical nature of the building and the area. They have been working diligently with the community to ensure signage rules are enforced consistently.
- [16] The Board asked the parties to address the Appellant's argument that the previous business had a permit for three signs. They stated the regulations had always limited the maximum number of signage to one per building face. The previous permit had been issued in error. Regardless, when a business changes, new permits are required for Signs. Unless a business is only refreshing its Signs for rebranding, a new permit is required.

Decision

- [17] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [18] The subject Site is within the DC1 Historical Commercial Direct Development Control District under the Strathcona Area Redevelopment Plan.
- [19] The Board is governed by Section 641(4)(b) of the Municipal Government Act which states in part, "if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, ...the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision."
- [20] DC1, Section 4(h), states a Fascia On-premise Sign is a Listed Use in the DC1 Zone.

- [21] The Board accepts the submission of the Development Officer and Heritage Officer that the Development Permit was refused because the proposed signage exceeded the maximum number allowable pursuant to DC1, Section 5(r)(i)(f)(8).
- [22] Further, the Board accepts the submission of the Development Officer that, in consultation with the Heritage Officer, they did consider a variance under Section DC1, Section 5(s), but declined to grant one because the building already has significant signage and the proposed Signs are of a significant scale and thus would diminish the historical nature of a building and the area.
- [23] Based on the evidence provided, the Board finds that the Development Authority did follow the direction of City Council in refusing the proposed development. Therefore, in accordance with Section 641(4)(b) of the Municipal Government Act, the Board may not substitute its decision for the development authority's decision and the appeal is denied.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge, Ms. K. Thind, Mr. A. Bolstad, Mr. K. Hample

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.