



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: May 19, 2016  
Project Number: 182506670-001  
File Number: SDAB-D-16-113

**Notice of Decision**

- [1] On May 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 7, 2016**. The appeal concerned the decision of the Development Authority, issued on **March 30, 2016**, to refuse the following development:

**Construct (1) Freestanding On-premises Sign (Zee's Car Wash).**

- [2] The subject property is on Plan 4746KS Blk OT, located at 16303 - 107 Avenue NW, within the CNC Neighbourhood Convenience Commercial Zone. The Medium Scale Residential Infill Overlay 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:
- The Appellant's written submissions;
  - The refused development permit with attachments;
  - Registered mail confirmation of delivery;
  - A Sign Combo permit application; and
  - The Development Officer's written submissions.

**Summary of Hearing**

- [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.
- i) *Position of the Appellant, Mr. G. Perry & Mr. H. Setrakian*
- [6] The Appellants reiterated the Grounds for Appeal included in the Notice of Appeal.

- [7] They suggested that the proposed development will not interfere with the neighboring properties. They seek a variance to the *Zoning Bylaw* because there is a hardship associated with the subject Site. However, they acknowledged that an encroachment agreement with the City of Edmonton will also be necessary.
- [8] Mr. Setrakian and his family have owned the property since 2004. Their carwash business is now being hampered by a row of condos that was recently built to the immediate west of the subject Site. The condo development has negatively impacted the business because eastbound traffic traveling along 107<sup>th</sup> Avenue can no longer see the carwash or its existing Sign. Both are completely obscured from their view. As a result, traffic to the carwash has been reduced by 50%. The only way to improve visibility is to put a Sign closer to the road.
- [9] They contacted the Right-of-Way management team with Edmonton Transportation Services (ETS) in 2009 to ask for permission to build the Sign in a location that encroaches on City property. They have written confirmation from ETS indicating that, under certain conditions, they would not object to the encroachment considering the location of the recently developed townhomes to the west of the subject Site.
- [10] Moving the proposed Sign further south on the property would not remedy the situation. Such a move poses a safety concern by interfering with the driving lane. There is a clearance issue that makes it inappropriate to relocate the Sign.
- [11] The proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. There have been no concerns registered against the existing Sign in 20 years. Moving the Sign a few feet after all of this time will not have any significant impact on the neighbourhood. The new Sign display is actually far more attractive than the existing display.
- [12] In designing the Sign, the Appellants wanted to comply with as many regulations as possible. The Sign's impact on pedestrians and the necessary horizontal clearance on the curb line have both been taken into consideration.
- [13] The Sign is the only advertising medium for the business on the subject Site. Mr. Setrakian relies heavily on this signage to attract customers to the carwash. It is vital to the success of his business.
- [14] The condos that were built to the west of the subject Site have had a massive impact on his business. He is not sure how close the condos are to the property line facing 107<sup>th</sup> Avenue, but some of the steps associated with the condos actually exceed the property line. He is not sure if the condo development itself is even legal.

[15] With respect to an encroachment agreement with the City, they stated that even if they kept the base of the Sign in its current location and merely projected the Sign's display out towards the property line, it would still be an encroachment, just to a lesser degree.

*ii) Position of the Development Officer, Mr. P. Adams*

[16] The Development Officer did not know how far away the condos to the west were from the property line along 107<sup>th</sup> Avenue, but he did acknowledge that it appeared to be very close and that it is possible that a variance was granted to allow that development.

[17] In his opinion, if the Appellant's proposed Sign was built right up to the property line without encroaching on City property, it would still be sufficiently visible from the road. He acknowledged, however, that he has not visited the Site to confirm this.

[18] He confirmed that, even if the Appellants use the base of the existing Sign and rotated it to face the property line, there would still be a bit of an encroachment onto City property.

*iii) Rebuttal of the Appellant*

[19] The Appellants stated that, if a variance was allowed for the condo development to the west of the subject Site, given the impact it has had on the subject Site, it would be appropriate for a variance to be allowed for the proposed Sign as well. The location proposed for the Sign is designed to have the least possible impact on the surrounding neighbourhood.

**Decision**

[20] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The Development is granted, subject to the following condition:

*i)* The Applicant shall first reach an encroachment agreement with the City of Edmonton.

[21] In granting the development, the following variance to the *Zoning Bylaw* is allowed:

*i)* The requirements of section 59.2(12) are waived. This variance is subject to the Applicant reaching the above mentioned encroachment agreement with the City of Edmonton.

**Reasons for Decision**

[22] The proposed development is a Permitted Use in the CNC Neighbourhood Convenience Commercial Zone.

- [23] The purpose of a Freestanding, On-Premises Sign is to identify or advertise a business located on the premises. A condo development to the west of the subject Site that is right on the property line has limited the ability of the existing Sign to fulfill that purpose.
- [24] The Board accepts that the proposed Sign will re-establish the Appellant's ability to properly advertise his business and, subject to the granting of an encroachment agreement by the City of Edmonton, justifies the waiver of Section 59.2(12) to allow a minor projection of the Sign onto City property.
- [25] Evidence was received that the Transportation Department has reviewed the proposed development and has indicated probable approval of the encroachment.
- [26] The Board did not receive any letters of objection from the surrounding neighbours within the 60-metre notification radius.
- [27] The Board does not have the power to grant an encroachment agreement but would strongly support the City's granting of such.
- [28] It is in the Board's opinion that the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Brian Gibson, Presiding Officer**  
Subdivision and Development Appeal Board

Board Members in Attendance  
Mr. N. Somerville, Mr. R. Hachigian

**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 5<sup>th</sup> 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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## **SDAB-D-16-114**

An appeal to Install 3 Fascia On-premises Signs (Spasation), existing without permits located at 10358 – 82 Avenue NW was **TABLED** to June 1 or 2, 2016