



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 9, 2016
Project Number: 232705755-001
File Number: SDAB-D-16-301

Notice of Decision

[1] On November 24, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 27, 2016. The appeal concerned the decision of the Development Authority, issued on October 24, 2016, to refuse the following development:

Install (1) Fascia On-premises Sign (Full Force Fitness)

[2] The subject property is on Plan 4984NY Blk 1 Lot 1, located at 4150 - 101 Street NW, within the IB Industrial Business Zone.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with proposed plans;
- Refused Development Permit decision;
- Development Officer's written submissions, dated November 16, 2016;
- Correspondence between the Development Officer and the Appellant;
- Authorization letter from the landlord; and
- Appellant's written submissions.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibits A-1 to A-17: Appellant's supporting documents (photographs)
- Exhibit B: Letter of support

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] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Full Force Fitness

- [8] The Appellant was represented by an agent, Mr. B. Romanesky from Permit Masters.

The Site and Surrounding Area

- [9] Mr. Romanesky submitted exhibits A-1 to A-17, a series of digital renderings of the proposed sign and photographs of the Site, including surrounding areas. The entire Site actually comprises of two industrial buildings. The fitness centre occupies part of one of these buildings, approximately 35,000 square feet. The overall building is 118 metres long. Referring to the digital renderings, he noted that the subject Sign is 2.9 metres high and 9.1 metres wide. The proposed Sign is therefore relatively small compared to the building, and not out of scale.
- [10] Contrary to the Development Officer's determination, it was the Appellant's view that the proposed development would not have an undue negative impact upon the adjacent hotel located northwest of the proposed Sign. In support, he referred to photographs of the hotel taken from various angles. These photographs included interior views of the hotel. Mr. Romanesky noted that the hotel windows facing in the direction of the proposed Sign are actually part of a four-storey atrium restaurant. The actual hotel suites face into the atrium, or north and south, onto nearby parking lots. The hotel suites do not have windows facing east toward the proposed Sign.
- [11] Mr. Romanesky pointed out that there are other lighting impacts on the adjacent hotel. For example, the street lamps in the hotel parking lot project light directly into some of the hotel suites' windows. Along Gateway Boulevard and across the street from the hotel toward the west, there is also a brightly illuminated commercial shopping strip. The industrial building adjacent to and north of the subject development has three Fascia On-premises Signs that also project light. Within this context, the addition of the proposed Fascia On-premises Sign for a fitness centre will not unduly impact the adjacent hotel.

Requirement to Face Public Roadway

- [12] Section 59F.2(1)(a) states that "Fascia On-premises Signs shall only face a public roadway other than a Lane". The Appellant did not dispute that the proposed Sign does not face a public roadway; indeed, it faces onto railway tracks, which separate the industrial building to the east from the adjacent hotel to the west.
- [13] However, the Appellant submitted that the intent of section 59F.2(1)(a) was to provide proper separation between buildings where there is illuminated fascia signage. In this

case, the impact of the proposed sign is mitigated by the railway tracks – though the tracks are not a “public roadway”, they serve the same purpose. In listing section 59F.2(1)(a) as a reason for refusal, the Development Officer likely did not conduct a site visit, as it could be argued that the hotel’s parking lot lighting projects more light into the hotel suites than the proposed Sign, which will be separated from the hotel by patches of grass and railway tracks.

Scale and Architectural Character of the Building and Land Use Characteristics of Surrounding Development

[14] Section 59.2(6) states:

For all Sign Applications, the Development Officer shall have regard for the scale and architectural character of the building and the land use characteristics of surrounding development. The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone.

[15] The Appellant submitted that the intent of section 59.2(6) is to protect the architectural character of a building where that architecture is of significance or of historical character, and to avoid the installation of a sign that does not integrate with the façade of the building. However, in this case, the proposed Sign will be installed onto an industrial building, which is essentially a “giant box.” Throughout the city, industrial buildings are frequently adorned with these types of signs.

[16] With respect to the scale of the proposed Sign, the Appellant disagreed with the Development Officer’s determination that the Sign dominates the building. As noted earlier, the building is 118 metres in length, while the proposed Sign is 9.1 metres wide. Furthermore, Council has identified specific districts where Fascia Signs have maximum dimensions; this is not the case here. The distinction should provide guidance to Sustainable Development that in this IB Industrial Business Zone, the sign sizing matters less.

[17] Upon questioning by the Board, Mr. Romanesky confirmed that the proposed Sign will have static illumination without animation features. He did conduct a form of community consultation, but noted that it is often difficult to obtain responses for commercial developments. He was able to obtain one letter of “no opposition” from a neighbouring business owner located at 4028 – 101 Street, which is a business located in the second building located on the same Site, directly to the south of the proposed development. He was unable to obtain any response from the owner or management of the adjacent hotel, though he had dropped off a letter approximately 10 days prior to the appeal hearing.

[18] Mr. Romanesky also confirmed that the proposed Sign orientation is intended to increase exposure onto Gateway Boulevard.

i) Position of the Development Authority

- [19] The Development Authority was represented by Ms. J. Daum, who was accompanied by her colleague Mr. P. Adams.
- [20] Regarding the three Fascia On-premises Signs on the building directly adjacent to and north of the subject building, a Comprehensive Sign Design Plan (“CDP”) was actually completed for those three signs. In those three cases, there was a recognition that their location on a corner site, with access to Whitemud Drive and facing onto both Gateway Boulevard and Whitemud Drive, could lead to a proliferation effect and negatively impact abutting properties. A CDP was therefore appropriate.
- [21] The lack of a CDP in this case means that in the future, there could be development on the hotel site such that the subject Sign would no longer be consistent with the surrounding area. Ms. Daum acknowledged that there is no requirement under the *Edmonton Zoning Bylaw* to conduct a CDP in this instance. However, a CDP would have been preferred, to avoid sign proliferation and a development that is out of scale and out of context.
- [22] Upon questioning by the Board, Mr. Adams clarified that CDPs are intended to apply to both future tenants and current tenants. The subject development falls within the IB Industrial Business Zone, which is a transitional zone. Currently, the building’s other tenant is an industrial user, who has no need for a Fascia Sign, but the user could change. A CDP, which would control future development permit applications and would apply to future Sign applications on this Site would therefore be appropriate.
- [23] Mr. Adams clarified that the concern here is not with sign proliferation, but with the size of the proposed Sign, as well as its proximity to a public roadway.
- [24] With respect to section 59.2(6), the Development Authority’s position is that the regulation applies to all sign regulations, not only to those developments that have architectural significance or are of heritage character. In this case, although the width of the proposed Sign may appear in-scale with the total length of the building, it is more dominant vertically.

iii) Rebuttal of the Appellant

- [25] The Appellant noted that the CDP was not mentioned at any time during the application process, and that there is no requirement to complete a CDP. In the case of the three Fascia On-premises Signs located on the building directly adjacent to and north of the subject property, those sign applications were made at the same time, and there was likely some value to completing a CDP that would cover all three signs simultaneously.

- [26] With respect to the Development Authority's submission that the proliferation of signs is regulated in the Land Use Bylaw, Mr. Romanesky acknowledged that Freestanding Signs do have regulations such as minimum distance requirements between signs. However, there is no such cap for Fascia On-premises Signs.

Decision

- [27] 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) The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens. (Reference Section 59.2(4))

Advisements:

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2).

- [28] In granting this development, the following VARIANCE to the *Edmonton Zoning Bylaw* is allowed:

- 1) Section 59F.2(1)(a) is varied to permit the proposed Fascia On-premises Sign to face onto railway tracks rather than a public roadway.

Reasons for Decision

- [29] Fascia On-premises Signs are a Permitted use in the IB Industrial Business Zone.
- [30] There are two issues before this Board: first, whether to grant the variance waiving the requirement under section 59F.2(1)(a); second, whether the criteria set out in section 59.2(6) are engaged by this application.
- [31] With respect to the first issue, the Board has decided to grant the variance waiving the section 59F.2(1)(a) requirement. This provision requires that Fascia On-premises Signs face a public roadway other than a Lane. It is acknowledged that this Sign does not face a public roadway. However, the Board has granted the variance for the following reasons:

- a) The subject Sign faces a very wide railway right of way. The segment of the railway that immediately faces the side of the building where the subject Sign will be affixed consists of six railway lines. This provides a significant buffer between the subject Site and the hotel site located on the other side of the tracks. The Board finds that the impact of the proposed Sign on this hotel site will be minimal for the following reasons:
- i. The proposed Sign does not face the hotel located to the west; it faces the parking lot which is adjacent to the hotel. The Sign is a full 38 metres south of the hotel.
 - ii. The parking lot of the hotel is very well illuminated. The Board was presented with photographic evidence showing that at night, the parking lot is lit with numerous street lamps as well as two Freestanding Signs, one of which is a Digital Sign, located on the hotel site.
 - iii. Further, the photographic evidence presented to the Board as well as the evidence provided by Mr. Romanesky who conducted a site visit to the interior of the hotel shows that the guestrooms in the hotel do not face the railway tracks, further reducing any impact of the proposed Sign upon the hotel.
 - iv. Having signs face the railway track and not a public roadway is characteristic of this area. In fact, there are three large Fascia Signs facing the railway tracks, and not a public roadway, on a large commercial building located immediately to the north of the subject building and located on the same Site. The Board notes that at least two of these signs are located closer to the hotel than the proposed sign, one of which is only 6.1 metres away.
 - v. The hotel was notified of this appeal in writing by the Appellant and would have also received notification from the administrative offices of this Board regarding this appeal. The hotel did not register any objection to this appeal. In fact, the only comment received by any land user within the 60 metre notification area was not opposed to the development. No adjacent landowners appeared in opposition to the development, and no letters of objection were received.

[32] For the above reasons, the Board finds that granting the required variance to section 59F.2(1)(a) 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.

[33] In the reasons for refusal, the Development Officer also referenced section 59.2(6), which states:

For all Sign Applications, the Development Officer shall have regard for the scale and architectural character of the building and the land use characteristics of surrounding development. The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone

[34] The Board has reviewed this section and finds that it is not engaged by this application.

- [35] First, the Board finds that the Sign is compatible with the scale and architectural character of the building in question, which is an industrial building and in the Appellant's own words, essentially a "giant box". A large Fascia On-premises Sign is perfectly compatible with this very large industrial rectangular building that is 118 metres long and nearly 7.56 metres high, as per the Development Officer's Written Submissions.
- [36] Secondly, the Board finds that the Sign is compatible with the land use characteristics of surrounding developments. As shown by the Appellant, the entire area at the intersection of Whitemud Drive and Gateway Boulevard is extremely well-lit with numerous signs – digital and non-digital – and street lamps. It is an area through which two of the city's largest thoroughfares intersect, as well as a major railway. Within this context, the Board finds that the proposed Fascia On-premises Sign will have no impact. The subject Sign is characteristic of the neighbourhood.
- [37] Finally, the Board finds that this Sign application will not adversely impact the amenities or character of this zone. The Board makes this finding based on the Board's comments above with respect to the nature of the surrounding area as well as its comments with respect to the variance granted to section 59F.2(1)(a) (see paragraphs 31, 35-36).
- [38] For the above reasons, the Board finds 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. The appeal is allowed and the development is granted.

Ian Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members Present:

A. Lund; K. Thind; S. LaPerle; 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*, RSA 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-16-302

Application No. 188283359-001

An appeal to **Change the Use from a Flea Market Use to a Night Club and Major Amusement Establishment (1757m² of Public Space on Plan B2 Blk 8 Lots 111-112, located at 10251 – 109 Street NW, was **WITHDRAWN****