



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 17, 2017
Project Number: 257396013-002
File Number: SDAB-D-17-206

Notice of Decision

- [1] On November 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 6, 2017. The appeal concerned the decision of the Development Authority, issued on September 28, 2017 to refuse the following development:

Construct exterior alterations to a Single Detached House, existing without permits (Driveway extension, 0.90m x 5.57m)

- [2] The subject property is on Plan 1425609 Blk 8 Lot 112, located at 13119 - 208 Street NW, within the RSL Residential Small Lot Zone. The Trumpeter Neighbourhood Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the refused permit, permit application, and plans;
 - Canada Post receipt confirming delivery of the refused permit decision;
 - Development Officer’s written submissions dated October 25, 2017; and
 - One online response in support of the development.

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 Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] 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, Roma Built Homes*

- [7] Mr. T. Mazzocca was in attendance representing Roma Built Homes. He builds about 10 homes a year and this is the first time he has ever built a home with an extended driveway.
- [8] This home was completed approximately five months ago and the owner had requested the extension to be used as a sidewalk to access the man door located on the north side of the garage. This extension was not on the original plans and Mr. Mazzocca was not aware that a permit was required. He has now applied for the required permit after the fact.
- [9] The developer, United Management, had no issue with the extension and reimbursed the homeowner's landscaping deposit. Mr. Mazzocca believes the extension looks attractive and has no negative impact. If the extension were constructed of paving stones it would be permitted. The current development looks aesthetically better than paving stones with weeds growing through them.
- [10] Mr. Mazzocca owns the house immediately to the north and his son will be living there. His son's garage will run parallel to the garage on the subject site and the area in between the two garages will be graded, covered with landscaping felt and filled with decorative rocks. Drainage is not affected and the City Drainage Department approved the development. The drain pipe would be in exactly the same location whether the extension was there or not and the location of the drain pipe across the walkway is common in new developments.
- [11] The property is located in a new subdivision and not many people live in the neighbourhood. However, one property owner across the street did submit an on-line response in support of the development. No one expressed any opposition to the development.
- [12] The driveway extension does not allow extra parking in the front yard as the total width is not large enough to accommodate three vehicles.
- [13] The Appellant had no objections to any of the conditions proposed by the Development Officer should this development be approved.

ii) Position of the Development Officer, Mr. J. Xie

- [14] The Development Officer did not attend the hearing and the Board relied on his written submissions.

Decision

[15] 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) This Development Permit authorizes the development of exterior alterations to a Single Detached House, existing without permits (Driveway extension, 0.90m x 5.57m). The development shall be constructed in accordance with the stamped and approved drawings.
- 2) Any other hardsurfacing alterations require a new application for a development permit.
- 3) Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.
- 4) As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development (Reference Section 57.2.1).
- 5) All open space including Front Yards, Rear Yards, Side Yards and Yards, at Grade Amenity Areas, Private Outdoor Amenity Areas, Setback areas and Separation Spaces shall be landscaped with flower beds, grass, ground cover or suitable decorative hardscaping in addition to trees and shrubs. This requirement shall not apply to those areas designated for parking or vehicular circulation. (Reference Section 55.3(1)(e))

Advisements:

- 1) Lot grades must match the Edmonton Drainage Bylaw 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-4965576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
- 2) Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.
- 3) 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 including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

- [16] In granting the development the following VARIANCES to the Zoning Bylaw are allowed:
- 1) No variance is required to section 54.1(4)(a), as the proposed development has been deemed to be a Walkway.
 - 2) Section 54.2(2)(e)(i) remains applicable, as no parking is being permitted on the Walkway.
 - 3) No variance is required to section 54.1(4)(c), as the proposed development has been deemed to be a Walkway.
 - 4) Section 55.3(1)(e) is waived to permit that portion of the Front Yard deemed to be a Walkway to be hardsurfaced.

Reasons for Decision

- [17] Single Detached Housing is a Permitted Use in the RSL Residential Small Lot Zone and Driveways and Walkways are Accessory to that Permitted Use.
- [18] The Board heard from the developer that the owner of the property had asked him to extend the Driveway to be used as a walkway to a man door located on the side of the garage. This extension is 0.90 metres wide and goes from the street to, and beside the garage. Near the top of the Driveway, there is approximately eight inches between the edge of the cement and the side lot line; however, this space tapers down toward the sidewalk, where there is effectively a net zero property line.
- [19] The Board raised a question about the placement of the drain pipe and its impact upon drainage; however, the placement of such has been approved by the City Drainage Department.
- [20] Because the extension is narrow there is not enough room to park an additional vehicle on the combined Driveway and extension. There are adequate parking spaces available within the double garage and on the Driveway. There will be no interference with on-street parking because the extension is a narrow strip.
- [21] Based on the above reasons, the Board finds that the extension is more accurately characterized as a Walkway per section 6.1(22), as the additional paved space cannot be used for vehicular parking.
- [22] The Board notes that it received one written submission in support of the proposed development and no one appeared at the hearing in opposition of the development.

[23] 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.

Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. N. Somerville; Ms. K. Thind; Mr. J. Kindrake; Mr. A. Peterson

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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: November 17, 2017
Project Number: 257830695-001
File Number: SDAB-D-17-203

Notice of Decision

- [1] On November 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 5, 2017. The appeal concerned the decision of the Development Authority, issued on September 12, 2017, to approve the following development:

To install (3) Fascia On-premises Signs (Remedy Cafe)

- [2] The subject property is on Plan 3901AJ Blk 186 Lots 17-21, located at 8625 - 109 Street NW, within the CB1 Low Intensity Business Zone. The Main Streets Overlay and 109 Street Corridor Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the approved permit, permit application, and plans;
 - Appellant’s written submissions including a real property report;
 - Development Officer’s written submissions dated October 19, 2017; and
 - Respondent’s written submissions and supporting materials.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit “A” – Notice of Development Received by Appellant
 - Exhibit “B” – Set of Three Photos Submitted by the Appellant

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] A question arose as to whether the appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26. This issue was dealt with as a Preliminary Matter.

Summary of Preliminary Matter

i) Position of the Appellant, 1032818 Alberta Ltd.

[8] The Appellant was represented by legal counsel, Ms. N. Kufeldt and Ms. A. Abdu.

[9] Ms. Kufeldt submitted a Notice from the City, addressed to 1032818 Alberta Ltd. which was stamped "Received" by CBM Lawyers on September 26, 2017. (Exhibit "A") The office of CBM Lawyers is the registered office for the Appellant. This notice is dated September 20, 2017, and clearly states that the notification appeal period is from September 26, 2017 to October 10, 2017. The appeal was filed on October 4, 2017, which is well within the October 10, 2017 deadline stated in the notice provided to them.

[10] The Appellant was not aware that there was a potential issue regarding late filing until they received the Respondent's written submissions shortly before the start of the hearing. Ms. Kufeldt submitted that the dates referred to by the Respondent (September 19, 2017 through October 3, 2017) is when notice must be provided to other parties, which is different than the dates on the appeal notice which was received by her client.

ii) Position of the Respondent, City Image Signs

[11] Mr. P. Pennycook appeared on behalf of City Image Signs. He was accompanied by the Owner of Remedy Cafe, Mr. S. Zaidi.

[12] The blue copy of the Sign Combo Permit Application which was received from the Development Officer, indicated that the Notice Period ran from September 29, 2017, to October 3, 2017. Pursuant to section 686(1) of the *Municipal Government Act*, an appeal must be filed within 14 days from the start of the notice period. When October 3, 2017 passed, the Respondent assumed that no appeal had been filed and they could go ahead with the development. City Image Signs did not see the document submitted by the Appellant (Exhibit "A") which sets out a different filing deadline. Mr. Pennycook could not explain the discrepancy in the dates and was never made aware of any changes to notice dates.

[13] Upon questioning by the Board, Mr. Pennycook stated that the approved permit decision was received on September 12, 2017, the same date that the permit was issued.

[14] Mr. Pennycook submitted that although the document submitted by the Appellant is date stamped as being received on September 26, 2017, the received date can only be determined for certain if the notice had been sent by certified mail.

[15] In response to a question from the Board, Mr. Pennycook clarified that the notification period of September 26 to October 10 from his supporting materials was obtained from the Agenda which forms a part of the appeal record which was prepared by Board administration.

iii) Rebuttal of the Appellant

[16] Ms. Kufeldt was surprised when she received the Respondent's materials on the morning of the hearing, and did not realize that possible late filing would be an issue. As such, she had only one copy of the notice her client had received. There was no intention to mislead the panel or to give incorrect evidence.

[17] There is confusion regarding the notice period of September 19, 2017 through October 3, 2017, and the notification of the appeal period which is September 26, 2017 through October 10, 2017. The former is the period to give notice to surrounding property owners, while the latter is the period for those same property owners to file an appeal. The Appellant was provided with a notification appeal period which is different from the notice period identified by the Respondent.

[18] At this point, the Board Officer reviewed the relevant sections of the *Edmonton Zoning Bylaw* and the *Municipal Government Act* to provide clarity with respect to the distinction between the notice period and the appeal filing period. The Board then met in-camera to determine whether they would assume jurisdiction.

Decision on the Preliminary Matter

[19] The Board assumes jurisdiction to hear the appeal.

Reasons for Decision on the Preliminary Matter

[20] The Board heard submissions from both the Appellant and the Respondent as to what constitutes a notice period, notification of appeal period, and notification period. Notwithstanding these submissions, and regardless of terminology, the timelines for filing an appeal are set out in the Board's governing legislation, the *Municipal Government Act*.

[21] Section 686(1)(b) of the *Municipal Government Act* states that an affected property owner may file a notice of appeal 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." (emphasis added)

- [22] Section 20.2 of said land use bylaw (the “*Edmonton Zoning Bylaw*”) sets out the notice requirements for Class B Discretionary Developments, including the requirement to provide notice of the decision to relevant parties by mail within seven days of the issuance of the decision, and publication of the decision in a daily newspaper within ten days.
- [23] The decision of the Development Authority was issued on September 12, 2017. Exhibit “A” indicates that notice by mail was sent on September 20, 2017.
- [24] No information was provided by the Development Officer, who did not attend the hearing, with respect to when newspaper publication was effected. Assuming that publication was made by September 22, 2017, that being 10 days from the date that the decision was issued, the Appellant would have 14 days after this date to file an appeal, pursuant to section 686(1)(b) of the *Municipal Government Act*. In other words, October 6, 2017 would have been the filing deadline for the appeal.
- [25] The appeal was therefore filed on time, on October 5, 2017, and the Board has jurisdiction to hear this appeal.
- [26] Alternatively, should the Board’s determination of filing dates be incorrect, particularly as there is no information before the Board as to when newspaper publication was effected, the Board notes that Exhibit “A” contains clear direction that an appeal may be filed “within 14 days of being notified”. The Appellant was notified on September 26, 2017, and it is reasonable that the Appellant should rely on the information contained in this letter from the City and conclude that the appeal filing deadline is October 10, 2017.
- [27] The Board finds that the conditions for filing an appeal correctly have been met; therefore, the Board assumes jurisdiction.

Summary of Hearing

i) Position of the Appellant, 1032818 Alberta Ltd.

- [28] The Appellant submitted a set of three photos showing the existing yellow canopy signs at the subject site. (Exhibit “B”). In the Appellant’s view, these photos show that the Respondent already has adequate signage.
- [29] The subject permit allowing three Fascia On-premises Signs on the north wall of 8625 – 109 Street should be refused as they contravene several requirements of the *Edmonton Zoning Bylaw* and the requirements for the Development Officer to grant a variance have not been met.
- a) The wall in question is located directly at the property line as shown on the Real Property Report; therefore the proposed signs will encroach on the Appellant’s property. The City only has authority to allow encroachments on City land as per

Section 15.7 of the *Edmonton Zoning Bylaw*. By approving these signs the Development Officer has granted such an allowance on private land which is outside of the authority granted in Section 15.7. These signs would require a private encroachment agreement between the parties.

- b) The proposed signs face the Appellant's parking lot and clearly do not face a public roadway as required by Section 59E.2(1)(a) of the bylaw.
 - c) As per Section 59.2(6): "The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone." This requirement has not been met as the signs have had and will continue to have an adverse effect on the parking amenity that the Appellant provides for customers.
- [30] The Appellant has been facing significant difficulty with the Respondent's patrons parking in the Appellant's parking lot, forcing the Appellant to hire parking control. Ms. Kufeldt stated that her client has restricted parking signs in place but these signs do not stop people from parking in the lot.
- [31] None of the existing signs on the building have permits and if an application had been made for them, they would all have been refused.
- [32] Ms. Kufeldt referred the Board to the photos of the existing and proposed signs contained in the approval documents from the Development Officer. The proposed sign creates undue hardship for her client because when read from most distances, it seems to suggest that the parking for Remedy Cafe is in the 109 Street parking plaza. The portion within the red arrow that directs Remedy Cafe's patrons to park on the "south side of building" is not easily discernable. What is immediately visible are the words "Remedy Cafe Customer Parking".
- [33] There is no reason for the northern side of that building to advertise the Remedy Cafe. Numerous large signs on the front of the building, as shown in Exhibit "B", already make it clear where the Cafe is located. The proposed signs would on the building's north face would create a hardship for her client as they provide the erroneous sense that Remedy Cafe patrons can park in her client's lot.
- [34] Ms. Kufeldt provided the following responses to questions from the Board:
- a) She agreed that concerns with respect to encroachment would be eliminated if the proposed signs were painted onto the building façade instead of protruding from the wall. However, the signs would still require approval by the City, and would still create undue hardship by signaling that her client's parking lot may be used by the patrons of Remedy Cafe.
 - b) The existing sign has been a problem for a long time and her client has had numerous conversations with the building owner asking that it be removed. Her client has also requested the owner to pay for parking enforcement. Ms. Kufeldt does not believe that City bylaw enforcement has ever been called.

- c) She agreed that only southbound traffic on 109 Street would see the proposed signs.
- d) The yellow Remedy canopy signs shown in Exhibit “B” would have required approval because they encroach onto City property. She believes the reason Section 15.7 of the Bylaw is worded this way is because the City has the authority to grant a variance for a sign that encroaches onto City property. However, the proposed signs encroach onto private property; therefore, the City has no authority to grant a variance.
- e) While the existing Pilates sign and Movie Studio sign definitely encroach onto her client’s property, the businesses are no longer in operation and Ms. Kufeldt cannot speak to agreements that may have been made with previous property owners. The bottom parking sign which will be replaced with the revised Remedy Cafe parking sign is the biggest concern as it is being changed significantly.

ii) Position of the Development Officer, Ms. S. Buccino

[35] The Development Officer did not attend the hearing and the Board relied on her written submission.

iii) Position of the Respondent, City Image Signs

[36] Mr. Pennycook questioned when the last time a land survey was done for the subject property. This is an older part of Edmonton and there was a time when rolling tape measures were used to pace around buildings. Buildings sometimes encroach on adjacent property.

[37] The Board referenced a copy of the Real Property Report dated October 18, 2017, which had been submitted by the Appellant. This report suggests that the building line is on the property line. Mr. Pennycook could not comment on the report as this was the first time he had seen it.

[38] Mr. Pennycook disputed that there was a net zero property line. He submitted that there is a six and a half to seven inch gap between the buildings. Flashing was installed over this gap several years ago to eliminate debris from entering this space. He referred the Board to photos contained in his submission which illustrate this gap.

[39] Because of the gap between the buildings, he submitted that the proposed signs do not encroach on the neighbouring property. As the signs are not encroaching, the City does have jurisdiction to grant the required variances to allow the proposed signs to be placed on the wall.

[40] The signs do not cause an adverse effect. The more people that come to the area the better it is for everyone. People come for coffee and frequent other shops in the vicinity. Mr. Zaidi does not ticket people who park in his lot, patronize his establishment, and then go

to other nearby businesses. He has seen the Domino's Pizza delivery people use his parking lot as well as patrons of the businesses to the north and the movie theatre across the street. Mr. Zaidi also has problems with university students parking in his lot while attending classes.

- [41] It is speculation that it is only Remedy Cafe patrons that are parking in the Respondent's lot. Mr. Pennycook does not believe that parking lot usage has actually been tracked. Mr. Zaidi has been in business for seventeen years and the yellow canopy signs let people know where to park. All patrons know where they can and cannot park, and Remedy Cafe has a sufficiently large parking lot to accommodate them.
- [42] The current Remedy Cafe parking sign on the north wall of the building was placed there at the request of Ms. Kufeldt's client. The existing sign for the movie studio and the Pilates sign were already on the building when the Remedy Cafe was opened, seventeen years ago. The obsolete signs will be removed when the new Remedy signs are installed.
- [43] The proposed signage is not intended to direct Remedy Cafe patrons to park in the neighbouring parking lot. They are trying to brand Remedy Cafe with new, clear signage and Mr. Zaidi likes the four monkeys logo. Mr. Pennycook advised that the graphics on the sign could be revised if required.
- [44] The Respondent confirmed that the only people who would be able to see the signs are those travelling south on 109 Street, and they would not be able to make a left hand turn at that location to turn into the Appellant's parking lot. There are no signs in place for northbound vehicles on 109 Street to show where the Remedy Cafe parking lot is located.
- [45] The unused sign box that is shown on the Appellant's photos belongs to the comic book shop. The sign was recently damaged during a strong windstorm.

iv) Rebuttal of the Appellant

- [46] The Real Property Report is recent and it is clear that the building wall is located on the property line.
- [47] The owner of Remedy Cafe implied that parking in the area is shared by neighbouring businesses. The Appellant would not have asked Remedy Cafe to put up a parking sign four years ago if that was the case. The sign is not working. If it were, Ms. Kufeldt's client would not have asked her to appeal the proposed signage.
- [48] Employees of the company hired to enforce parking speak to people and ask them where they are going. The majority of them are Remedy Cafe patrons. This clearly shows that not all of Mr. Zaidi's clients know where to park.

Decision

[49] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision

[50] The proposed development is for three Fascia On-premises Signs, which are Permitted Uses in the CB1 Low Intensity Business Zone.

[51] The proposed development does not comply with section 59E.2(1)(a) of the *Edmonton Zoning Bylaw*, which states: "Fascia On-premises Signs shall only face a public roadway other than a Lane." A variance to this regulation is therefore required.

[52] The Board's test for determining whether to grant a variance is set out in section 687(3)(d) of the *Municipal Government Act*, which states in part that the Board may grant a variance if "in its opinion, 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".

[53] The Board finds as follows:

- a) Both the Appellant and the Respondent acknowledged that the proposed signs are on the north facade of the Respondent's building, and faces the Appellant's parking lot instead of the public roadway, as required under section 59E.2(1)(a) of the *Edmonton Zoning Bylaw*.
- b) There is currently a small directional sign on the north wall of the Respondent's building, adjacent to the Appellant's parking lot to the north. This sign directs the Respondent's patrons to park on the lot to the south of Remedy Cafe, but has been ineffective in preventing patrons from using the Appellant's parking lot.
- c) One of the three proposed signs will replace this small directional sign, and will communicate the same message to Remedy Cafe's patrons to park on the parking lot to the south.
- d) Based on the aerial view of the subject Site, the Board notes that the Respondent's parking lot is most easily accessible by northbound traffic. Since access to this parking lot is located south of Remedy Cafe, it is possible that a northbound driver will miss the turnoff into this parking lot, and choose instead to park in the Appellant's parking lot located north of Remedy Cafe.
- e) Due to the orientation of the Respondent's building and parking lot in relation to the Appellant's parking lot, parking flow along 109 Street has the effect of impeding customers of Remedy Cafe from using the designated parking lot accessible only from the south.

f) Although the proposed signage will be located on the north facade of the Respondent's building, and therefore visible only to southbound traffic which is prohibited from making left turns into the Appellant's parking lot, the signs in aggregate appear to encourage Remedy Cafe's patrons to use the Appellant's parking lot.

[54] Based on the above, the Board finds that the proposed development will materially interfere with or affect the use and enjoyment of neighbouring parcels of land, namely the Appellant's property. As the proposed development does not meet the test per section 687(3)(d) of the *Municipal Government Act*, the requested variance is denied.

[55] The Board notes that during the course of the hearing, various submissions were made with respect to potential encroachment, or lack thereof, onto private land owned by the Appellant. Based on the Board's findings above, it is not necessary to make any findings in this regard. The Board simply acknowledges that the *Edmonton Zoning Bylaw* appears to be silent with respect to the City's authority to grant permits that effectively allow one property owner to encroach on another owner's lands.

Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. N. Somerville; Ms. K. Thind; Mr. J. Kindrake; Mr. A. Peterson

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*, 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.
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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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