EDMONTON
TRIBUNALS
Subdivision & Development Appeal Board

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Date: June 29, 2018
Project Number: 278838248-001
File Number: SDAB-D-18-086

Notice of Decision

[1] On June 14, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **May 16, 2018**. The appeal concerned the decision of the Development Authority, issued on April 20, 2018, to approve the following development:

> **To construct an Addition to a Single Detached House (enclosed deck, 4.54 metres by 8.11 metres), existing without permits.**

[2] The subject property is on Plan 0523967 Blk 22 Lot 4, located at 1448 - Woodward Crescent NW, within the RF1 Single Detached Residential Zone.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submission;
- The Appellant's written submissions;
- The Respondent's written submissions, including signatures of support;
- An email in opposition; and,
- Online responses.

Preliminary Matters

[4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair 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 (the "*Municipal Government Act*").

Summary of Hearing

i) Position of the Appellant, Mr. D. Lammie:

[7] Mr. Lammie presented photographs which were referenced to illustrate that the proposed existing addition to the house is a sunroom structure attached to the house. He submitted that his property is most impacted because the rear yard backs onto the subject site.

[8] He noted that the approved variance in the rear setback is significant because it results in a deficiency of 3.8 metres.

[9] The variance power of the Development Officer is limited by section 11.4 of the *Edmonton Zoning Bylaw* to cases of unnecessary hardship or practical difficulties peculiar to the use, character, or situation of land or a building which is not generally common to other land in the same zone. However, it was his opinion that there is nothing unique about the house or lot in question that would justify the required variance. Neighbouring properties have been developed within the building pocket and have not required significant variances to the development regulations.

[10] The requested variance has a significant visual impact because it reduces the amount of separation space between the house on the subject site and his house.

[11] Mr. Lammie submits that the addition is a large, tall structure that was used by the previous owners almost year round. It visibly blocks views, amplifies noise and is not aesthetically appealing. Conversations and music within the covered deck are amplified to the point that it can be heard inside neighbouring houses. Part of the noise issue can be attributed to the design of the structure and part can be attributed to the location being too close to neighbouring houses. Approving the variance reduces the ability to utilize their property and negatively impacts property value. The structure is not visually pleasing because it contains large glass windows that are dirty during the summer months or frosted over during the winter months.

[12] The addition also creates fire and safety hazards because there is a natural gas BBQ, natural gas heater and natural gas connection that are used inside the addition. This equipment is intended for outside use in a well ventilated area. This could potentially create a significant carbon monoxide risk as well as a fire safety risk for the residents, guests and the neighbourhood, especially because of the deficiency in the rear setback. There are also trees and shrubs located along the property line that increase the fire risk.

[13] All houses located in the Wolf Willow Ridge neighbourhood are subject to strict architectural guidelines to ensure consistent and appropriate development within the neighbourhood. Each lot has a restrictive covenant on their land title that requires development to comply with the architectural guidelines.

[14] With regard to the previous comments by the Appellant, the Chair advised the Appellant that the Board does not have jurisdiction to consider or rule on a restrictive covenant because that would be considered an error in law. The Board can only consider matters related to municipal permitting and public law.

[15] It was Mr. Lammie's opinion that it was the responsibility of the property owner to ensure that a development permit was properly issued before commencing with construction.

[16] The decision and justification to approve this development is an error in judgement on the part of the Development Officer because there is nothing unique or unusual about this lot, and allowing a variance in the rear setback will set a precedent for other developments in the neighbourhood.

[17] Other neighbours have complained about excessive noise generated by the enclosed deck and one neighbour has expressed concern about the process followed by the City and the way that property owners are allowed to circumvent development regulations.

[18] To this end, the Chair explained the test for the Board as set out in section 687 of the *Municipal Government Act* and asked the Appellant to explain how the proposed development will impact the amenities of the neighbourhood and materially impact the use, enjoyment and value of his property.

[19] The Appellant explained that noise generated from the enclosed deck can be heard in his bedroom and rear yard, and the structure is visible from inside his house as well as the rear yard, which impacts the aesthetics and value. It was his opinion that the existence of the enclosed deck and reduced rear yard in the subject property will not be appealing to prospective buyers if the Appellant were to sell and he further added that this development is not characteristic of the neighbourhood.

[20] Mr. Lammie provided the following information in response to questions from the Board:

a) There are some trees along the fence line on the subject lot as well as on his lot but they do not adequately screen the structure.

b) There are several other covered decks in the area but they are not enclosed, did not require variances, are built inside the building pocket and appear to be an extension of the house.

c) The materials used to construct the covered deck seem to amplify the noise directly into their house and bedroom that faces onto the structure.

d) An appraisal of their property has not been prepared by a real estate professional but friends who work in real estate have commented on the structure and its impact on their property value.

e) Asked why they had not made other complaints over the years the structure was existing, the Appellants stated that they were not aware that the structure was built without a development permit and tried to be good neighbours. However, when they received notice that the structure was not permitted, they took the opportunity to address their concerns.

ii) Position of the Development Authority, Mr. Y. Peng Qin

[21] The Development Officer provided a written submission but did not attend the hearing.

iii) Position of the Respondent, the previous owner, Ms. A. Ovics-Sharon and Mr. D. Muscat, Legal Counsel:

[22] Mr. Muscat submits that the previous owners resided at this property for four years and hired a professional contractor to enclose their deck. The contractor assured the owners that all of the required permits had been obtained. They only learned that the structure did not have a development permit during the sale of their house.

[23] The appeal notification period ended after the house was sold and the appeal was filed after the new owners took possession. If the sunroom has to be removed there will be implications for both the previous and current owners.

[24] The appeal should be denied and the development permit issued because the sunroom does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

[25] The previous owners discussed the details of the sunroom and the variance required with their immediate neighbours. All of them, except the Appellant, provided written support for the development. Notice was delivered to at least 20 other properties as identified on the notification map and to the Community League with no other objections raised.

[26] The sunroom was installed approximately three years ago and the previous owners did not receive any complaints from the neighbours.

[27] Based on this, the Appellant's claim that issuing the development permit with the required variance will materially affect the use, enjoyment and value of neighbouring properties is unfounded.

[28] Mr. Muscat submits that a material affect must be identified not just an inconvenience or a dislike.

[29] The sunroom was professionally built over an existing compliant deck. The structure, materials and design were approved by an Engineer. The sunroom has a polycarbonate roof, powder-coated aluminum frame, three-season windows and fiberglass mesh screens, which make it lightweight, secure and durable.

[30] The sunroom does not contain any wood or flammable materials, thus making it safe and non-hazardous to the home owners and surrounding neighbours. All of the doors and windows can be opened for adequate ventilation to accommodate the use of a BBQ and heaters. All of the building codes and regulations have been complied with and, therefore, the Appellant's concerns regarding fire and safety issues are unfounded.

[31] The distance between the original deck and the rear fence has always been 3.71 metres. Enclosing the deck with transparent material should not negatively affect the use, enjoyment or value of neighbouring properties. The sunroom is an upgrade to the original deck because it adds privacy, reduces noise levels and compliments the aesthetics of the house.

[32] The reduced rear setback is mitigated by a large fence, tasteful landscaping to separate properties and provide privacy.

[33] The sunroom is completely transparent and does not cause reflections, massing, privacy or shading issues for neighbouring properties.

[34] Use of the sunroom is limited to three seasons unlike a glass solarium or typical house addition that can be used year round.

[35] The new property owners have submitted a letter of support because they want the sunroom to remain as it exists. They decided to purchase this home because of the existing sunroom. The new owners acknowledged the noise concerns raised by the Appellant and are willing to address any problems that may arise in the future.

[36] The Appellant did not provide any evidence relative to the noise concerns. It was noted that none of the other neighbours ever raised concerns about the sunroom since it was installed. It was difficult to understand how the use of a sunroom can create more noise than the use of a deck that will remain even if the sunroom has to be removed.

[37] The Development Officer noted that there was a practical difficulty for the property owners in this case because even though the lot area is over 750 square metres in size, the depth is only 31 metres, which is only one metre greater than the minimum required 30 metres in the RF1 Zone. The house was built 7.6 metres from the rear lot line. Therefore, enclosing the deck in a narrow rear yard requires a variance in the rear setback.

[38] The Chair clarified that the Board is not bound by the variance test that applies to the Development Officer. The test for the Board is contained in section 687 of the *Municipal Government Act*.

[39] Mr. Muscat reiterated that the appeal should be denied because the existing sunroom does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

iv) Rebuttal of the Appellant:

[38] It was noted that one of the property owners who initially signed in support of the development rescinded their support and submitted a letter of objection. The Appellant believes that this conduct leads to some questions regarding the consultation process with neighbouring property owners.

[39] The covered deck does not mute noise. Noise emanating from the structure can be heard inside their house even when the windows are closed.

[40] Granting the variance could set a precedent for the development of similar structures in the neighbourhood. If this structure is approved it will remain with the property forever.

[41] The previous owners used the structure for three seasons of the year and, therefore, it has much more impact than an uncovered deck only used during the warm weather months.

Decision

[42] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

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

1. The minimum required Rear Setback of 7.5 metres as per section 110.4(10) is varied to allow a deficiency of 3.79 metres, thereby reducing the minimum required Rear Setback to 3.71 metres.

Reasons for Decision

[44] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.

[45] The enclosure of a compliant rear deck is considered an addition to a Single Detached House that requires a variance in the minimum required Rear Setback. In this case, the distance from the house (enclosed deck) to the rear lot line is 3.71 metres instead of 7.5 metres.

[46] The Board considered and granted this variance for the following reasons:

a) The minimum Rear Setback requirement was established to provide sufficient amenity area in the Rear Yard. Based on a review of the photographic evidence provided, the subject lot is large enough to provide adequate amenity space in the Rear Yard even with the enclosed deck.

b) The minimum Rear Setback requirement also addresses massing impacts on neighbouring property owners. Based on a review of the evidence and photographs provided, the enclosed deck is a single storey translucent/transparent structure that is stepped down from the existing two storey Principal Dwelling and, therefore, will not cause any significant massing effects or overlook issues onto neighbouring properties.

[47] The Appellant raised three primary concerns, specifically increased noise, the aesthetic impacts of the structure as seen from their property, and their opinion that it is not characteristic of the neighbourhood which will result in a negative impact on the value of their property.

[48] The Board considered the concerns of the Appellant but found that they were not compelling enough to persuade the Board to refuse the proposed development by not granting the required variance. The Appellant did not provide sufficient evidence to demonstrate how enclosing an existing rear deck would significantly increase noise. The deck would be used whether covered or uncovered and could generate the same amount of noise even if the variance was not granted.

[49] The appearance of the structure and whether or not it is aesthetically pleasing is subjective.

[50] The Board notes that three to four neighbours have provided written support for the existing structure. The Board notes the suggestion of the Appellant that this support may have been obtained without full disclosure from the Respondent. However, the size of the required variance was contained in the information that was provided to the neighbours. The neighbours are all very familiar with the location and the appearance of the sunroom that has existed on this property for three years.

[51] Based on the evidence provided that there are other covered decks existing in this neighbourhood, although not of a similar design, the Board could not conclude that the existing transparent enclosed deck is not characteristic of the neighbourhood.

[52] For these reasons the Board finds that the existing enclosed deck 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.

[53] Therefore, the appeal is denied.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board members in attendance: Mr. B. Gibson, Mr. C. Buyze, Mr. K. Hample, Ms. G. Harris

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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: June 29, 2018
Project Number: 262445566-001
File Number: SDAB-D-18-087

Notice of Decision

[1] On June 14, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **May 16, 2018**. The appeal concerned the decision of the Development Authority, issued on May 11, 2018 to refuse the following development:

> **To install one (1) Freestanding Minor Digital On-premises Off-premises Sign (one (1) Digital panel 3 metres by 6.1 metres facing north). (PATTISON - RALLY SUBARU).**

[2] The subject property is on Plan 0326134 Blk 94 Lot 8, located at 5215 - Calgary Trail NW, within the (CB2) General Business Zone. The Major Commercial Corridors Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submission; and
- The Appellant's written submissions.

Preliminary Matters

[4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair 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, Mr. J. Murphy, Legal Counsel for Pattison Outdoor Advertising:

[7] The maximum allowable combined digital sign copy area and any other type of copy on the same sign face shall not exceed 65.0 square metres. The proposed sign area is 18.58 square metres.

[8] Section 813.4(6)(a) of the Major Commercial Corridors Overlay states:

> Setbacks with a minimum Width of 7.5 metres shall be provided adjacent to Major Arterial Roads within the Major Commercial Corridors and adjacent Arterial Roads that directly intersect such Major Arterial Roads. However, the Development Officer may use variance power to reduce this Setback requirement to a minimum Width of 4.5 metres, provided that:
>
> i. the average Width of the Setback is not less than 6.0 metres; and
>
> ii. this Setback width relaxation is required to allow for a more efficient utilization of the Site and the relaxation shall result in an articulation of the Setback width that shall enhance the overall appearance of the Site.

In Mr. Murphy's opinion, the Development Officer could have and should have granted this variance.

[9] A site plan was referenced to illustrate that the proposed sign will be setback 4.5 metres from Calgary Trail. The on-site building (Rally Subaru) is setback approximately 8.5 metres from Calgary Trail. The requirements of section 813.4(6)(a) have been met because the average width of the setback is not less than 6.0 metres and the relaxation will enhance the overall appearance and allow a more efficient use of the site for the car dealership.

[10] The proposed sign falls within the Transportation Association of Canada cone of vision. Pattison Outdoor Advertising commissioned a safety assessment for the proposed sign location as an alternative to locating the sign 7.5 metres from the west property line, outside of the cone of vision. The report concluded that the sign is not expected to have a negative impact on the driver workload. Subdivision Planning reviewed the report and accepted the conclusion.

[11] Photographs were referenced to illustrate the location of a previously existing digital sign on the abutting lot to the south of the subject site. The proposed sign is intended to replace that sign which existed at its former location for many years without any difficulty or complaints, and was removed to accommodate the re-development of that site.

[12] A Google Earth aerial photograph was referenced to show the location of the sign that was removed, the location of the proposed sign and the billboard sign that is located within the minimum required 300 metre separation distance. This deficiency is more than compensated for by the fact that the larger billboard sign is located around a curved portion of Calgary Trail from the proposed sign location and the two signs cannot be seen at the same time while driving south.

[13] In Mr. Murphy's opinion, the proposed sign will not add to the proliferation of signs in this area because the proposed sign is simply replacing a sign that has been removed and the variance required in the minimum separation distance is minor.

[14] The Calgary Trail Land Use Study is not a statutory plan. It is a document upon which future planning is to be based and it does not bind the Board. It was adopted in 1984 at a time when sign development was not a matter of land Use but merely one of regulatory approval only and before the development of digital signs. The Calgary Trail Land Use Study discourages old-fashioned billboards. The proposed minor digital sign is brand new and similar signs throughout the City have been accepted as extremely attractive.

[15] A previous decision of the Board was referenced that dealt with the Calgary Trail Land Use Study.

[16] Subdivision Planning and the Development Officer recommended conditions that are acceptable to the Applicant.

ii) Position of the Development Officer, Ms. B. Noorman:

[17] The Development Officer provided a written submission and did not attend the hearing.

Decision

[18] 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 permit will expire on June 29, 2023.

2. The proposed Freestanding Minor Digital On-premises Off-premises Signs shall comply in accordance to the approved plans submitted.

3. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))

4. Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada; (Reference Section 59.2(5)(b))

5. Minor Digital On-premises Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(8))

6. All Freestanding Signs, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12)).

7. The following conditions, in consultation with Subdivision Planning, shall apply to the proposed Minor Digital Off-premises Sign, in accordance to Section 59.2.11:

   a. That, should at any time, City Operations determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Operations.

   b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.

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

1. The minimum required separation distance of 300 metres per schedule 59F.3(6)(e) is varied to allow a deficiency of 20 metres, thereby reducing the separation distance to 280 metres.

2. The minimum required (west) Setback of 7.5 metres per section 813.4(6)(a) is varied to allow a deficiency of 3.0 metres, thereby reducing the (west) Setback to 4.5 metres.

3. The requirements of section 813.4(6)(b) are waived.

Reasons for Decision

[20] A Freestanding Minor Digital On-premises Off-premises Sign is a Discretionary Use in the (CB2) General Business Zone.

[21] The Development Officer identified four reasons for refusal. The first reason for refusal is a deficiency of 20 metres in the minimum required 300 metre separation distance, pursuant to schedule 59F.3(6)(e) of the *Edmonton Zoning Bylaw*. The Board granted a variance from that requirement for the following reasons:

a) The proposed Minor Digital On-premises Off-premises Sign will replace a Digital Sign that previously existed on the lot immediately south of the subject Site. Pattison Outdoor Advertising recently removed that Sign. The primary function of the minimum separation distance requirement is to prevent the proliferation of Signs. The Board finds that granting the variance will not increase the proliferation of Signs along Calgary Trail because the proposed Sign is simply replacing a Digital Sign that has been removed.

b) The Board notes that the proposed Sign has a Copy Area of 18.58 square metres which is well below the maximum allowable Copy Area of 65.0 square metres, which will mitigate the impact of the sign.

c) The proposed Sign and the existing Sign that is located within the minimum required 300 metre separation distance are separated by a significant curved portion of Calgary Trail. The result is that the proposed Sign and the existing Sign cannot be seen at the same time while driving south along Calgary Trail. The Board finds that this further mitigates any concerns about Sign proliferation.

d) The existing Sign that is located within the minimum required 300 metre separation distance is a paper poster board, not a Digital Sign.

e) For all of these reasons, the Board finds that granting the variance in the minimum required separation distance will not unduly interfere with the amenities of the neighbourhood nor materially affect the use, enjoyment or value of neighbouring parcels of land.

[22] The second reason for refusal cited by the Development Officer was that the proposed Sign does not comply with section 3.4.b.ii of the Calgary Trail Land Use Study. However, the Calgary Trail Land Use Study is not a statutory plan within the definition of the *Municipal Government Act*. Section 4(31) of the City of Edmonton Charter states that in relation to the City of Edmonton, section 616(dd) of the *Municipal Government Act* shall be read as follows:

(dd) “statutory plan” means

(i) an intermunicipal development plan,

(ii) a municipal development plan,

(iii) an area structure plan,

(iv) an area redevelopment plan, and

(v) an additional statutory plan under section 635.1

adopted by the City under Division 4;

The Calgary Trial Land Use Study does not meet the above definition. Not only is it not a statutory plan within the meaning of the *Municipal Government Act*, it is not a Bylaw of the City of Edmonton either, being approved by a Council Resolution on September 11, 1984. Section 687(3) of the *Municipal Government Act* sets out the documents that this Board must comply with; it does not list any document class that would include a document such as the Calgary Trail Land Use Study.

The Board is therefore not bound by the Calgary Trail Land Use Study although it has reviewed the terms. The Board agrees with the evidence of the Appellant that this Study was adopted by City Council in 1984 prior to the development of Digital Signs. While it does discourage the Use of portable signs and free-standing billboards it also suggests that "particularly older signage" should be targeted noting that it was "perceived by many to be unattractive". Given that the Study was adopted by Resolution in 1984 prior to the development of Digital Signs, it is difficult to determine whether or not the Calgary Trail Land Use Study has an impact on this application for a new Digital Sign.

[23] The third reason for refusal was that in the opinion of the Development Officer, the proposed Sign was not in keeping with the General Purpose of the Major Commercial Corridors Overlay which is "to ensure that development along major Commercial Corridors is visually attractive and that due consideration is given to pedestrian and traffic safety". It was the opinion of the Development Officer that the proposed Sign contributes to Sign proliferation and does not enhance development along the Major Commercial Corridor architecturally or visually.

The Board finds that the attractiveness of a Digital Sign is subjective. While some find them unattractive, others find them a significant improvement over paper billboards. The proposed Digital Sign will replace a Digital Sign that has been removed and will not have a visual or architectural impact on development along Calgary Trail.

[24] With respect to traffic safety, the Applicant commissioned a safety assessment for the proposed Digital Sign location that is signed and sealed by a Professional Engineer. The assessment concluded that there are no traffic or safety concerns arising from the proposed Digital Sign at this location. Transportation Services reviewed and accepted the conclusions of the assessment with the addition of four additional conditions that have been imposed by the Board. Therefore, the Board finds that the proposed development complies with section 813.1 of the Major Commercial Corridors Overlay.

[25] The final reason for refusal was a deficiency in the minimum required width of the Setback adjacent to a Major Arterial Roadway. However, the Development Officer had variance power to reduce the Setback requirement from 7.5 metres to 4.5 metres if the average Width of the Setback is not less than 6.0 metres and the relaxation is required to

allow for a more efficient utilization of the Site and the relaxation shall result in an articulation of the Setback Width that shall enhance the overall appearance of the Site.

The Board finds that the development permit is for one Minor Digital On-premises Off-premises Sign. Based on the evidence provided, the principal building (Rally Subaru) on the Site is Setback approximately 8.5 metres from the (west) property line. Therefore, the average Width of the Setback is not less than 6.0 metres. Granting the variance to reduce the Setback requirement will allow for more efficient utilization of the Site because the car dealership requires a significant amount of parking for its inventory.

The proposed Sign will not have a significant visual impact and will not impact surrounding land uses along Calgary Trail.

[26] The Board notes that, section 813.4(6)(b) of the Major Commercial Corridors Overlay states that:

> Within the Setback areas specified above, a minimum of five deciduous trees (with a minimum Caliper of 6 centimetres), three coniferous trees (with a minimum Height of 3.0 metres), and 20 shrubs shall be required for each 35.0 metres of lineal Yard Frontage. A continuous screen, an average of 0.75 metres in Height, shall be provided within the required Setback, through a combination of berming and shrub planting

If this development requirement is triggered by approving the development permit application, the Board waives this requirement for the following reason:

a) This requirement did not exist or was waived at the time of the issuance of the Major Development Permit for this Site. The addition of the proposed Sign does not significantly alter the Site. Based on a review of the photographs provided, the Board notes that the Site is located in a heavily commercialized zone and the existing landscaping is characteristic of the area.

[27] For these reasons the Board finds that the proposed development with the conditions imposed, 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.

[28] The appeal is allowed.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

<u>Board members in attendance</u>: Mr. B. Gibson, Mr. C. Buyze, Mr. K. Hample, Ms. G. Harris

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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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SDAB-D-18-078

Project Number: 274185671-001

An appeal to change the Use from a Single Detached House to a Lodging House (7 sleeping units) was **TABLED** to August 8, or 9, 2018