



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 29, 2016
Project Number: 160474324-006
File Number: SDAB-D-16-095

Notice of Decision

[1] On April 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 15, 2016. The appeal concerned the decision of the Development Authority, issued on March 8, 2016 to refuse the following development:

replace a Roof Off-premises Sign with (1) Freestanding Minor Digital Off-Premises Sign (6.1m x 3m).

[2] The subject property is on Plan 209AN Blk 28A Lot 17, located at 13315 - 126 Avenue NW, within the IM Medium Industrial Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.

[3] The following documents were received prior to the hearing:

- Appellant's written submissions;
- Development Officer's written submissions;
- Sign Combo Permit Application; and
- Adjournment Letter.

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*, RSA 2000, c M-26.

i) *Position of the Appellant, represented by Ms. J. Agrios, legal counsel*

[6] The Board was asked to approve a development permit that would replace a static rooftop Sign with a Freestanding Digital Sign. The Sign was refused by the Development Authority because it exceeds the maximum allowable Height prescribed by the *Edmonton Zoning Bylaw*.

- [7] The Sign is located in the IM Medium Industrial Zone, North of Yellowhead Trail and East of St. Albert Trail, visible to northbound traffic on St. Albert Trail.
- [8] There are some differences between the two Signs. The first Sign, which has a valid development permit, is a static, illuminated roof-top Sign that is 18 metres in Height; it faces south and is visible to northbound traffic. The second Sign (the proposed Sign) is a 10 x 20 metres digital Sign, mounted on a single pole that is 13.5 metres in Height; it faces South and is visible to Northbound traffic.
- [9] The only non-compliant element of the proposed Sign is that it exceeds the Zone's Height requirements. The Appellants request a variance to the Height to allow the 13.5 metres Sign for visibility reasons, because it is set back by approximately 100 metres from St. Albert Trail, and is located behind a number of buildings.
- [10] The Appellants had a survey done to determine the lowest Height at which the Sign would be visible from St. Albert Trail. The survey indicated that the bottom of the Sign had to be between 10 – 10.5 metres in Height.
- [11] Ms. Agrios advised the Board that the test by which they are bound as set out in the *Municipal Government Act* and *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 (“*Newcastle*”), is whether the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [12] With respect to the first part of the test (interference with the amenities of the neighbourhood), Ms. Agrios argued that the proposed Sign will not interfere with the amenities of the neighbourhood because in this case, the Sign is not situated in a residential area, but rather bounded by two major roads – Yellowhead Trail and St. Albert Trail. Furthermore, she argued that there were no letters of objection to the proposed Sign and there was one letter of support from a neighbouring property owner. In addition, Transportation Services had “no objections” to the proposed Sign. Finally, she argued that the current Sign impacts the neighbourhood more so than will the proposed Sign.
- [13] The minimum required 100 metres separation distance between Signs is met. The closest digital Sign is on Yellowhead Trail, over 300 metres away. The closest non-digital Sign is 125 metres away, is screened by trees, and both Signs are not visible at the same time.
- [14] With respect to the second part of the test (interference with the use, enjoyment or value of neighbouring parcels of land), Ms. Agrios argued that the buildings to the west and south of the proposed Sign have no windows into which illumination of the Sign would potentially project. Ms. Agrios showed the Board photographs of the immediate area surrounding the Sign, which she described as “dark and run down” and argued that it is difficult to see how the Sign would impact neighbours.

- [15] Asked how the Sign impacts traffic flow, Ms. Agrios advised the Board that the proposed Sign does not obstruct traffic flow, particularly because the Sign is located on a portion of the Yellowhead Trail that drops below St. Albert Trail, rendering the Sign visible only from St. Albert Trail. Further, she noted that Transportation Services reviewed the matter and expressed no concerns. She noted that the conditions prescribed by Transportation Services are acceptable, in the event the Board allows the appeal.
- [16] Ms. Agrios confirmed that the proposed Sign is not visible to people traveling along nearby service roads. She also advised that the closest residential neighbourhood is Sherbrook, which is approximately 300 metres away, is separated by a berm, a wall, and trees.

ii) Position of the Development Officer, Mr. S. Ahuja

- [17] Mr. Ahuja was asked to explain the reasoning behind the 8 metres Sign Height restriction in the *Edmonton Zoning Bylaw*; he explained that it is because it is distracting because of its proximity to the roadway.
- [18] Asked whether the fact that the proposed Sign is located further from the roadway is a mitigating factor, Mr. Ahuja advised the Board that it is not and that the illumination is likely to have an impact on neighbouring properties.
- [19] Mr. Ahuja acknowledged that nobody has complained about the current Sign, but reiterated that Height is restricted in the *Edmonton Zoning Bylaw* and that he was not in a position to grant a variance to the Height of the Sign. He noted that the proposed Sign would have been approved but for the excess in Height.
- [20] Asked whether he agreed that surrounding businesses would not be impacted by the Sign's illumination at night because they will be closed, Mr. Ahuja agreed.
- [21] Mr. Ahuja noted that although the current Sign is taller, the proposed Sign still has an adverse impact because of the way it looks; the two Signs cannot be compared.

iii) Rebuttal of the Appellant

- [22] Ms. Agrios disagreed with the Development Officer about the Sign being visible at 8 metres in Height.
- [23] The Appellant advised the Board that light emission from the proposed Sign would actually have a positive effect on the neighbourhood because the rear lane is dark.

Decision

[24] 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:

- i. The permit shall be approved for a term of not longer than 5 years, at which time the applicant shall apply for a new development permit for continued operation of the sign.
- ii. That, should at any time, Transportation Services 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 Services.
- iii. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services 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.
- iv. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

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

- i. A variance of 5.5 metres in Height pursuant to Section 59G.3(6)(b) to allow for a maximum Height of 13.5 metres.

Reasons for Decision

[25] A Minor Digital Sign is a Discretionary Use in the IM Medium Industrial Zone.

[26] The *Newcastle* decision clearly states that in determining variances, the Board is strictly bound by Section 687(3)(d)(i) which provides that in making its decision the Board must find 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.

[27] The Board was not provided with any planning reasons for its consideration that demonstrate that the proposed Sign would have unduly interfered with the amenities of the neighbourhood or materially affected the use, enjoyment or value of neighbouring parcels of land.

- [28] The Board notes that the approved existing development permit for a roof top Sign indicates a Height of 18 metres. This application, although for a Minor Digital Sign, is for 13.5 metres. It is the Board's position that the reduction in Height helps mitigate any added impact that may occur between a static Sign and a Minor Digital Sign.
- [29] The neighbourhood where the Sign is located is within an exclusively industrial area, and therefore, the impact of an illuminated Sign is mitigated given that the majority of business operations close after dark when the illumination is most evident. There are no Residential areas impacted by this sign.
- [30] The Board notes that the existing development permit for a roof top Sign, notwithstanding that it is higher, also had an increased support structure (three poles), and the proposed digital Sign application has one pole, which mitigates the visual impact of the Sign.
- [31] The Board notes that Transportation Services did not object to the proposed Sign, but did provide some conditions, as adopted above.
- [32] The Board received no objections and nobody appeared in opposition to the proposed Sign.
- [33] The Board received one letter of support from a neighbouring property owner.
- [34] Section 59G indicates a maximum Height for a Minor Digital Sign at 8 metres. The underlying Zone states that the maximum Height of a Sign cannot exceed the maximum Height of a structure in that Zone. The maximum Height in the underlying Zone is 18 metres, pursuant to Section 420.4(4).
- [35] The Board accepts, pursuant to Exhibit "B" that a Sign, 13.5 metres in Height and located 100 metres from the road, would appear lower than a Sign 8 metres in Height adjacent to the road.
- [36] For the above-noted reasons, the Board finds 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.

Vincent Laberge

Subdivision and Development Appeal Board

Board Members in Attendance

Mr. S. Somerville; Mr. R. Hachigian; Mr. A. Peterson, Ms. K. Thind

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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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: April 29, 2016
Project Number: 179750559-001
File Number: SDAB-D-16-096

Notice of Decision

[1] On April 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 16, 2016. The appeal concerned the decision of the Development Authority, issued on February 25, 2016 to approve the following development:

construct a Single Detached House with front veranda, fireplace and rear uncovered deck (5.18m x 3.66m).

[2] The subject property is on Plan 1523615 Blk 25 Lot 18B, located at 8722 - 116 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents were received prior to the hearing:

- Appellant's written submissions;
- Development Officer's written submissions and permit plans; and
- Respondent'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*, RSA 2000, c M-26.

i) *Position of the Appellant, Mr. V. Choi*

[6] Mr. Choi provided the Board with evidence of neighbours in opposition to the proposed development (Exhibit "A").

- [7] Mr. Choi explained to the Board that he misunderstood the nature of the Board's jurisdiction. Mr. Choi believed the Board had the jurisdiction to decide on the subdivision issue, which is the crux of his opposition to the proposed development.
- [8] Asked by the Board to comment on the variance with respect to the dormer width, Mr. Choi explained that he is opposed to the development, but could not further elaborate on the impact of the dormer, saying only that he "hopes it's not affecting the neighbours".
- [9] Mr. Choi explained to the Board that he is concerned that the proposed development will set a precedent of allowing other people to build houses similar to the proposed development.

ii) Position of the Development Officer, Ms. F. Hamilton

- [10] Ms. Hamilton was asked whether the building is a 2.5 or 3-storey structure. She advised that it is a 2.5-storey structure because the dormer portion of the roof is only on the front portion of the house, and the rear portion slopes down.
- [11] The Board referred to the portion of the building plans that show what appears to be a stub wall and asked Ms. Hamilton to explain whether it might be a 3-storey structure and, if so, whether another variance is required. She explained that it is a 2.5-storey structure and that it must be under 40% to be considered a half-storey and that the dormer wall does not factor into the definition of a "storey" because it is a projection from the existing roof structure (it is part of the eaves).
- [12] She confirmed that 3-storey structures are not allowed in the RF1 Zone.

iii) Position of the Respondent, Mr. W. Neeser

- [13] Mr. Neeser advised the Board that the proposed development is a Permitted Use in the RF1 Zone and that it aligns with the City's mandate to slightly increase density in urban neighbourhoods.
- [14] Mr. Neeser provided the Board with a number of photographs illustrating that the proposed development is consistent with the neighbourhood, including those with an identical dormer width. He advised the Board that the front dormer reduces massing effect and sun shading on the rear of the home.
- [15] Two homes shown in the photographs he provided were used in City literature as good examples of developments on narrower lots.

- [16] He also advised the Board that he conducted a community consultation with respect to the proposed development wherein he provided his neighbours with a comprehensive package setting out the details of the proposed development and the one variance required.
- [17] Of the four or five people who objected to the proposed development, only two were within the 60 metres notification radius.

iv) Rebuttal of the Appellant

- [18] Having reviewed the Respondent's photographs, Mr. Choi is concerned that the roof is sloped, rather than flat, as indicated in the building plans.
- [19] He is also concerned if the proposed development does not meet the required setback provisions.

Decision

- [20] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority. In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
- i) A variance of 0.71 metres is granted pursuant to Section 814.4(15) to allow the dormer width to be increased to 3.81 metres in width.

Reasons for Decision

- [21] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [22] The Board notes that all regulations within the *Edmonton Zoning Bylaw* and Mature Neighbourhood Overlay have been met save for the variance noted above.
- [23] The variance requested and granted has to do with an over-width dormer that has a maximum 3.1 metres and that is being requested to be increased to 3.81 metres. Therefore, the dormer is 0.71 metres too wide, as allowed under the *Edmonton Zoning Bylaw*.
- [24] The Board was not presented with any planning reasons that would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

- [25] The Board further notes that the dormer projects toward an open field in the university area and does not project toward the other single-family homes.
- [26] The Board accepts the Development Officer's conclusion that this meets the half-storey definition prescribed within the Height limits under Section 6.1(47).
- [27] The Board notes that the Respondent did community consultation as required within the Mature Neighbourhood Overlay and the findings were provided to the Board. The consultation indicated support, including that of the Windsor Park Community League.
- [28] While the Appellant tried to appeal the original subdivision application, the Board advised the Appellant that it was not the subject of the hearing before them.
- [29] The Board recognizes there were two letters not in support of the appeal, but that was for the subdivision itself, not the present appeal; there were no other letters.
- [30] The Board, through questioning the Appellant, tried to ascertain the impact the variance would have on the neighbourhood. The Appellant could not provide sufficient planning reasons that the Board could accept to overturn the Development Officer's decision.
- [31] The Board finds 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.

Vincent Laberge
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