

Edmonton Subdivision and Development Appeal Board

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Date: April 30, 2015
Project Number: 139511609-003
File Number: SDAB-D-15-071

Notice of Decision

This appeal dated March 13, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to an existing Automotive and Minor Recreation Vehicle Sales/Rentals development (revise previously approved landscape plan to replace landscaping with fencing)

on Plan 1428NY Blk 21 Lots 1, 2U, located at 8115 - 137 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 15, 2015. The decision of the Board was as follows:

March 26, 2015 Hearing:

MOTION:

“that the appeal be scheduled on April 15 or 16, 2015 at the written request of the Appellant.”

April 15, 2015 Hearing:

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26, (the “MGA”).

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations to an existing Automotive and Minor Recreation Vehicle Sales/Rentals development (revise previously approved landscape plan to replace landscaping with fencing), located at 8115 - 137 Avenue NW. The subject site is zoned CB1 Low Intensity Business Zone. The development permit application was refused because of a deficiency in the required number of trees and shrubs; landscaping has not been provided on the required Setback areas to the required level; perimeter planting has not been provided; and it is the opinion of the

Development Officer that, as the development is a Discretionary Use in the CB1 Zone, the proposed exterior alteration will have a negative visual impact on surrounding properties.

Prior to the hearing, the following was provided to the Board:

- A written submission from the Development Officer dated April 10, 2015

The Board heard from the Appellant, Mr. Grewal, who provided the following information in support of the appeal:

1. Mr. Grewal would like to build a fence in order to secure his site.
2. His insurance company is pressuring him to increase security on the Site because of the theft of three vehicles in the past six months.
3. The requirement to provide 10 feet of landscaping in addition to the fence will significantly reduce the available area to store his vehicles.
4. The trees and 6 foot high wooden fence located on the abutting residential property to the east provides screening for his Site.
5. There is a service road and city boulevard with trees and grass located along the north side of his site.
6. There is no landscaping provided along 82 Street on the west side of his site.
7. He would be willing to plant trees along 82 Street but not along the north and east sides of the Site.

Mr. Grewal provided the following responses to questions:

1. The proposed fence will be a 4 foot high metal fence.
2. He was not aware of the security issues that would arise when his original development permit application was approved in January 2014. The conditions imposed on the permit allowed two years in which to complete the landscaping requirement.
3. In response to the information provided in the written submission of the Development Authority, he indicated that he had approximately 40 vehicles parked on the site and that some of his customers may have parked illegally.

The Board then heard from Mr. Imai Welch and Ms. Jolene Brooks, representing the Sustainable Development Department, who provided the following submission:

1. Mr. Welch provided the Board with a Site Plan, Landscaping plan, photographic evidence, and aerial imagery of the Site marked as "Exhibit A".
2. The Site Plan that was approved in January 2014 included 26 on-site parking spaces. The Landscaping on that plan complied with the requirements of Section 55 of the *Edmonton Zoning Bylaw*.
3. The approval of the development permit application was based on that submitted plan.

4. Aerial imagery from Google Street View and photographs taken from inspections conducted in June 2014 and March and April, 2015 illustrated that there were between 50 and 55 vehicles parking on the site, which far exceeds the 26 approved for the original development permit. Some of the parked vehicles are encroaching onto the public sidewalk and the entrance to the Site.
5. A fence could be built to compliment the landscaping that is required.
6. In most situations, excess inventory for Automotive and Minor Recreation Vehicles/Sales Rental is usually stored off-site.
7. Discussions were held with the Applicant regarding the necessity of the Landscaping condition in order to provide screening for the neighbouring residential properties and to ensure that all vehicles would be parked on Site.

Mr. Grewal made the following points in rebuttal:

1. It was his opinion that the vehicles illustrated in the photographs submitted by the Development Authority were parked appropriately on the Site.
2. He referenced the approved site plan to illustrate how tandem parking is provided on the Site.
3. Providing the required landscaping will only allow 26 vehicles to be parked on the Site and his business cannot survive with that number of vehicles.

Mr. Grewal provided the following responses to questions:

1. If the fence is built, vehicles cannot be parked on the sidewalk.
2. He intended to comply with the conditions imposed on his approved permit but he was not aware of the problems that would result.
3. The required landscaping will be hidden from the street if he builds a fence.

Decision:

that the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED

Reasons for Decision:

The Board finds the following:

1. Automotive and Minor Recreation Vehicle Sales/Rentals is a Discretionary Use in the CB1 Low Intensity Business Zone.
2. The Board finds that it is especially important that a commercial development which is located along an arterial roadway that borders a residential area must be sensitive and in scale pursuant to the purpose of the CB1 Low Intensity Business Zone, Section 330.1 of the *Edmonton Zoning Bylaw*.

3. Further, the Board finds that Landscaping is essential in order to screen the activities of the Automotive Minor Recreation Vehicle Sales/Rental Use that are occurring on the subject Site from the neighbouring residential lands and the arterial roadway that borders the Site to offset any potential negative impacts pursuant to Section 55.4(1) of the *Edmonton Zoning Bylaw*.
4. The proposed three variances would eliminate all of the Landscaping requirements contained in Section 55.4(7) of the *Edmonton Zoning Bylaw*.
5. The primary reason provided by the Appellant to grant the proposed variances in the Landscaping requirements is to support an intensification of the Use by allowing more vehicles to be stored on the site than was approved in January 2014.
6. The Board finds that such an intensification of the Use that is being requested by implication would have a negative visual impact on surrounding property owners and result in an incompatible Use of the land.
7. The Board notes that an Automotive and Minor Recreation Vehicle Sales/Rentals is a Discretionary Use in the CB1 Low Intensity Business Zone and that granting the variances will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

Important Information for 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, 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.
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 5th Floor, 10250 – 101 Street, Edmonton.

Mr. I. Wachowicz, Presiding Officer
Subdivision and Development Appeal Board

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Date: April 30, 2015
Project Number: 129332249-002
File Number: SDAB-D-15-076

Notice of Decision

This appeal dated March 23, 2015, from the decision of the Development Authority for permission to:

Develop an Overall Sign Design Concept for Gorman DC1 16166 (Manning Town Centre)

On Plan 1123619 Blk 3 Lot 3, located at 15705 - 37 Street NW; Plan 1123619 Blk 3 Lot 4, located at 3421 - 158 Avenue NW; Plan 1223987 Blk 3 Lot 5, located at 3408 - 153 Avenue NW; Plan 1224580 Blk 3 Lot 7, located at 15704 - 37 Street NW; Plan 1224580 Blk 3 Lot 8, located at 15510 - 37 Street NW; and Plan 1224580 Blk 3 Lot 9, located at 15304 - 37 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 15, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26, (the "MGA").

The Board heard an appeal of the decision of the Development Authority to approve an application to develop an Overall Sign Design Concept for Gorman DC1 16166 (Manning Town Centre), located at 15705 – 37 Street NW, 3421 – 158 Avenue NW, 3408 – 153 Avenue NW, 15704 – 37 Street NW, 15510 – 37 Street NW, and 15304 – 37 Street NW. The subject site is zoned DC1 Direct Development Control Provision (Gorman Bylaw 16166) and is within the Pilot Sound Area Structure Plan. The development permit application was approved subject to conditions and subsequently appealed by an adjacent property owner.

Prior to the hearing, the following was provided to the Board:

- A written submission from the Development Officer dated March 27, 2015
- A copy of Bylaw 16166
- A written submission from the Appellant dated April 13, 2015

At the outset of the hearing the Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, Chapter M-26 which states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Presiding Officer advised that the Appellant, Mr. Rick Payne, would not be appearing and has asked the Board to proceed based on the reasons for the appeal as outlined in his written submission. A copy of his submission is on file and has been provided to the Respondent and the Development Authority. The Appellant's concern is that the number of proposed and/or approved signs for this site is excessive and has a negative impact on neighbouring residential property owners.

The Board heard from Ms. Brenda Noorman, representing the Sustainable Development Department, who reviewed her written submission and made the following points:

1. There are five Freestanding On-premises Signs (low profile entrance Signs) located on the subject Site.
2. These low profile entrance Signs are pedestrian oriented.
3. It was her opinion that these five low profile entrance Signs should not be included in the 11 allowed Signs, pursuant to Section 4(m) of the DC1 Direct Development Control Provision.
4. These Signs are low in Height and have very little impact. Therefore, excluding them is in keeping with the General Purpose of the DC1 Direct Control Provision to develop a shopping centre.

Ms. Noorman provided the following responses to questions:

1. The proposed development complies with the development regulations contained in Schedule 59E of the *Edmonton Zoning Bylaw* and Section 4(l) and (m) of the DC1 Direct Development Control Provision.
2. The five low profile entrance Signs fall under the definition of Freestanding On-premises Signs.
3. The five low profile entrance Signs are approximately 1.5 metres in height and have a Sign area that exceeds 1.0 square metre. Therefore, pursuant to Section 12.2(17)(i) a development permit is required because the Sign area exceeds 1.0 square metres.
4. With the 11 Signs proposed in this application there will be a total of 16 Signs on the Site, with an excess of five Signs pursuant to Section 4(m) of the DC1 Direct Development Control Provision.
5. The wording of several conditions within the approval had incorrect references to the *Edmonton Zoning Bylaw*. The remaining conditions ensured that the Signs were located within private property.

The Board then heard from Mr. Domanski on behalf of the Respondent, Cameron Development Corporation, who provided the following information:

1. It was his opinion that any subdivided parcel of land was considered as a Site when the DC1 Bylaw 16166 was approved and now the entire development is considered a Site.
2. The five low profile entrance Signs do not exceed 1.5 metres in Height.
3. Mr. Domanski used a PowerPoint presentation marked Exhibit "A" to illustrate that the Height of the proposed Signs were measured from the geodetic elevation of 664.182 metres to the top of the Signs.
4. Three Signs will be moved off Manning Drive. The Signs are all 10 metres high and will comply with the minimum required separation distance. A 6 metre high drive aisle Sign will be installed.
5. He reviewed the size of both the Type 1 and Type 2 Signs all of which are permitted.
6. It was his opinion that the five low profile entrance Signs should not be classified as Freestanding On-premises Signs.

Mr. Domanski provided the following responses to questions:

1. It was his opinion that a development permit was not required for the five low profile entrance Signs because they do not exceed 1.5 metres in Height.

In response to a question from the Board, Ms. Noorman provided the following clarification:

1. She was not sure if Section 59.3(3) of the *Edmonton Zoning Bylaw* provides her with the authority to approve the development permit application and she is therefore seeking a decision from the Board.
2. She increased the notification radius from 60 metres to 200 metres because of the ambiguity surrounding her authority to approve the proposed development.

Decision:

that the appeal be ALLOWED and the decision of approval by the Development Authority REVOKED

Reasons for Decision:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states, "if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision."

2. The proposed development, a series of Freestanding On-premises Signs, is a Use listed in the DC1 Direct Development Control Provision – Gorman, Bylaw 16166. However, in Bylaw 16166 Council explicitly stated that there be no more than 11 Freestanding On-premises Signs.
3. The Respondent submits that five of the signs, which are the low profile entrance Signs illustrated on page 6 and 7 of the Manning Town Centre Overall Sign Design Concept, are not Freestanding On-premises Signs because they do not exceed 1.5 metres in Height, and therefore are Signs that do not require development permits pursuant to Section 12.2(17)(i) of the *Edmonton Zoning Bylaw* and therefore should not be classified as Freestanding On-premises Signs. The Board rejects that argument for the following reasons:
 - a) Based on the evidence provided by the Development Authority, the five low profile entrance Signs fit the definition of a Freestanding On-premises Sign because they identify the activity occurring on the Site, specifically the creation and location of the Manning Town Centre Shopping Centre.
 - b) Section 12.2(17)(i) of the *Edmonton Zoning Bylaw* should be interpreted to mean that a development permit is not required for a Sign that does not exceed a Height of 1.5 metres and the maximum allowed Sign Area of 1.0 square metres. Interpretation of Section 12.2(17)(i) in any other way could result in a situation where a developer would not require a development permit for a sign of potentially unlimited area as long as it did not exceed 1.5 metres in Height, which could not possibly be the intent of the *Edmonton Zoning Bylaw*.
4. Accordingly, the Board finds that the five low profile entrance signs are classified as Freestanding On-premise Signs and that approving this development will allow 16 Signs to be located on the subject Site which exceeds the maximum allowable number of Signs pursuant to Section 4(m) of the DC1 Direct Development Control Provision – Gorman Bylaw 16166.
5. Therefore, the decision of the Development Authority did not follow the direction of Council.
6. There was some discussion with respect to the authority provided to the Development Authority pursuant to Section 59E of the *Edmonton Zoning Bylaw*. The Board finds that authority was not provided to the Development Authority in this application because:
 - a) Schedule 59E is not specifically referenced in DC1 Direct Development Control Provision – Gorman, Bylaw 16166.
 - b) While it could be argued that authority is referenced by the explicit reference to Schedule 59E in Section 4(k) of the DC1 Bylaw, the fact that Section 4(m) states that “notwithstanding Schedule 59E” it is clear that despite Schedule 59E it was the express direction of City Council that no more than 11 Freestanding On-premises should be allowed on this Site and that authority was not provided to vary that direction.
7. Based on the above, the appeal must be allowed and the decision of approval by the Development Authority revoked.

Important Information for 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, 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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Mr. I. Wachowicz, Presiding Officer
Subdivision and Development Appeal Board