



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: May 2, 2019
Project Number: 306349178-001
File Number: SDAB-D-19-056

Notice of Decision

- [1] On April 17, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on March 18, 2019. The appeal concerned the decision of the Development Authority, issued on March 13, 2019 to refuse the following development:

Install (1) Freestanding Minor Digital Off-premises Sign (1-side 3 metres by 6.1 metres facing E) (PATTISON - Kinco Tires).

- [2] The subject property is on Plan 644AE Blk 13 Lot 1, located at 12506 - 124 Street NW, within the IB Industrial Business Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.
- [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 refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submission.

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 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of Mr. Murphy, Legal Counsel for the Appellant, Pattison Outdoor Advertising*

- [7] Pattison did not intend to locate the sign in the location where it currently exists.
- [8] The sign should be located 6.5 metres from the south property line.
- [9] He referred to TAB 2 in his submission, the 2008 original development permit. That permit was approved by a different Development Officer.
- [10] That Development Officer approved the proposed Sign according to all of the regulations in the *Edmonton Zoning Bylaw* and the appropriate Sign Schedule. A variance was granted on the approved permit but was not specified what the variance was for.
- [11] He referred to the Legal Property/Curb Lines diagram from Transportation in TAB 2 of his submission. This is the document that was attached to the original development permit and shows that the sign will be located in the corner of the property.
- [12] The sign has existed at this location since the time the original development permit was approved in December 11, 2008 and the Building Permit was approved in January 22, 2009.
- [13] He referred to TAB 4 of his submission, the original survey showing the location of the existing sign and how it encroaches onto City property.
- [14] There is a large boulevard between the subject Site and Yellowhead Trail, which provides an adequate buffer between the sign and Yellowhead Trail.
- [15] The sign can be rotated two degrees, which will fix the encroachment.
- [16] He referred to TAB 5 of his submission, a photograph from 2013 showing the sign located on a rock garden at the front of the property, which is outside the parking area.
- [17] If the sign is moved, it will take up parking spaces on the subject site.
- [18] He referred to a photograph from 2018 showing that the sign has not changed since the original permit was approved.
- [19] He referred to TAB 5 of his submission, an overhead view showing that the sign is tucked in behind the building and faces the Police impound lot, adjacent to the subject Site.
- [20] The sign has existed since 2008 with no known complaints.

- [21] The Development Officer suggested that the sign should be relocated. Moving the sign on the property will negatively impact the property owner as the sign will take up parking spaces.
- [22] A memorandum from Transportation indicates that they do not have an issue with the sign, but they note that it may need to be removed once reconstruction of Yellowhead Trail takes place.
- [23] The variances in the Setbacks will not negatively impact the use and enjoyment or the amenities of neighbouring properties.
- [24] Mr. Murphy provided the following information in response to questions by the Board:
- a. The building has existed for several years.
 - b. The road has existed since the time the area was subdivided. The subject Site is the same from the time of the subdivision.
 - c. He confirmed that they are aware the existing sign may need to be removed during reconstruction of Yellowhead Trail.
 - d. They are in agreement with the suggested conditions by the Development Officer. If the appeal is allowed, they will rotate the sign so it will not encroach onto City property.

ii) Position of the Development Officer, Ms. Noorman

- [25] The Development Authority did not appear at the hearing and the Board relied on Ms. Noorman's written submission.

Decision

- [26] 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** as proposed by the Development Authority and reviewed by the Applicants:
1. The permit will expire on May 2, 2024.

2. 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)).
3. 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)).
4. All 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)).
5. The following conditions, in consultation with Subdivision Planning (Transportation department), shall apply to the proposed Minor Digital Off premises Sign, in accordance to Section 59.2.11:
 - i. The permit shall be approved for a term of no longer than 5 years, at which time the applicant shall apply for a new permit for continued operation of the sign.
 - ii. 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.
 - iii. 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.
 - iv. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENTS:

1. The Yellowhead Trail Freeway Conversion Team has advised that future construction may require removal or relocation of the sign. Design decisions and possible impacts will not be determined until well into 2020. As of right now, it is known that there will be a closure of the intersection of Yellowhead Trail and 124 Street, as well as construction of interchanges at adjacent intersections 121 Street and 127 Street. Construction for this area could begin as early as 2023. Please contact Joleen Mazurat at 780-944-7659 for more information.
2. Should the Applicant wish to display video or any form of moving images on the sign, a new development application for a Major Digital Sign will be required. At that time Subdivision Planning will require a safety review of the sign prior to supporting the application.
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 such as the *Municipal Government Act*, the *Edmonton Building Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2).

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

1. The minimum required (south) Setback of 6.0 metres as per Schedule 59F.3(6)(j) and Section 400.4(3) is varied to allow a deficiency of 6.0 metres, thereby decreasing the minimum required to 0 metres. The minimum required (east) Setback of 6.0 metres as per Schedule 59F.3(6)(j) and Section 400.4(3) is varied to allow a deficiency of 4.5 metres, thereby decreasing the minimum required to 1.5 metres.

Reasons for Decision

- [28] The proposed development is a Discretionary Use in the IB Industrial Business Zone.
- [29] The Sign was built in January 2009 and has existed at this location since that time with no known complaints.
- [30] The sign was built in a different location than applied for in the original permit and now requires variances in the required Setbacks.
- [31] There is a large boulevard separating the existing Sign and Yellowhead Trail that mitigates the decreased Setback.

- [32] The variances granted to the required Setbacks are minimal and will not have a negative impact in the area.
- [33] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [34] Based on the above, it is the opinion of the Board 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.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. W. Tuttle; Mr. R. Hachigian; Ms. K. Thind; Ms. E. Solez

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. Noorman / Mr. Luke

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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P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: May 2, 2019
Project Number: 237889353-005
File Number: SDAB-D-19-038

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on March 20, 2019, made and passed the following motion:

“That the appeal hearing be scheduled for April 17, 2019, to allow the Appellant to be represented by legal counsel”.

- [2] On April 17, 2019, the Board made and passed the following motion:

“That SDAB-D-19-038 be raised from the table.”

- [3] On April 17, 2019, the Board heard an appeal that was filed on February 25, 2019. The appeal concerned the decision of the Development Authority, issued on February 4, 2019, to refuse the following development:

Change the Use from a Convenience Retail Store to Minor Alcohol Sales.

- [4] The subject property is on Plan RN43 Blk 29 Lot 1, located at 11303 - 95 Street NW, within the CB1 Low Intensity Business Zone. The Secondhand Stores and Pawn Stores Overlay applies to the subject property.

- [5] 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 refused Development Permit;
- The Development Officer’s written submissions;
- Documents submitted from the Appellant and Legal Counsel for the Appellant; and
- Online responses.

Preliminary Matters

- [6] 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.

- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (“*Municipal Government Act*”).

Summary of Hearing

i) Position of Mr. Venkatraman, Legal Counsel for the Appellant, N. Weldemariam

- [9] Mr. Venkatraman read the reasons why the development permit was refused.
- [10] In his opinion, the other liquor store located 464 metres from the proposed development was far enough away that it would not pose any problems for the neighbourhood.
- [11] Mr. Weldemariam expressed the opinion that the other liquor was located on a Site that was more than 2.5 hectares, which would allow the development officer to reduce the 500-metre separation distance pursuant to Section 85(2). However, he could not provide the Board with any evidence to support this opinion.
- [12] Mr. Weldemariam has an approval for an AGLC license, but his application for a development permit was refused.
- [13] In his opinion, the Board has the power to approve the proposed development as it is a Discretionary Use in the CB1 Low Intensity Business Zone.
- [14] He referred to Appendix 1 showing the location of other liquor stores located less than 500 metres from each other.
- [15] He provided the Board with a newspaper article regarding City Council’s decision to allow a liquor store in the Ice District that had a separation distance of less than 500 metres from other liquor stores.
- [16] In his opinion, this set a precedent for reducing the 500-metre separation distance.

The Presiding Officer indicated that the Board is not bound by precedent and it evaluates each appeal individually on its merits.

- [17] The Appellant provided the Board with a petition with 86 signatures in support of the proposed development from neighbours who live in the neighbourhood.
- [18] Many of the tenants in the Norwood Village Apartments directly across the street from the proposed development are in support of the proposed liquor store.

- [19] The Appellant will ensure the subject Site has proper lighting and the Site will be kept clean.
- [20] The Appellant will install a high quality security system which will be fully monitored.
- [21] Mr. Venkatraman provided the following information in response to questions by the Board:
- a. In his opinion, there is not much opposition to the proposed development. One of the letters received was not signed and the Board should not consider it. In his opinion, all residents in the area have a right to object. However, his client has the right to operate a business to provide for himself.
 - b. He confirmed that the bar that was in close proximity to the proposed development as mentioned in one of the letters received was no longer at that location.
 - c. They are relying on law enforcement to take care of the area.
 - d. The concerns of the neighbours will be the same even without a liquor store in the area. There is no evidence that a liquor store will increase the neighbours' concerns.
 - e. With regard to the neighbours' concerns that the area is not suitable for a liquor store, he confirmed that there are other liquor stores in the area.
 - f. He confirmed that the liquor stores that were recently approved are in commercial areas as opposed to residential areas.
 - g. With the number of residents and businesses in the area, there is a need for a liquor store. People will walk to the liquor store rather than driving elsewhere.
 - h. He believes the proposed development complies with Section 330.1, the General Purpose of the (CB1) Low Intensity Business Zone, that states (in part) that development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.
 - i. He stated that the Appellant wants to operate a liquor store to accommodate residents in the area that are within walking distance.
 - j. A restaurant approximately one block away previously operated as a bar.
 - k. They had no knowledge of a sober living facility in apartment building across the street as was alleged by some of the neighbours opposed to the development.

ii) Position of Affected Property Owners in Support of the Appellant

[22] Mr. Woldegiorgis lives in the Queen Mary Park neighbourhood.

[23] He confirmed that he does not live in the area of the proposed liquor store.

[24] He has worked in the area and helps the community where the Appellant's proposed liquor store is.

[25] He believes his friend can promote and operate a good business that will benefit the community.

iii) Position of the Development Officer, Ms. Kim

[26] The Development Authority did not appear at the hearing and the Board relied on Ms. Kim's written submission.

*iv) Position of Affected Property Owners in Opposition to the Appellant*Mr. Forget

[27] Mr. Forget lives in the neighbourhood and is representing the Alberta Avenue Community League. He is on the community garden committee for the Community League.

[28] He believes the proposed liquor store is across the street from a sober living facility.

[29] The liquor store will be in close proximity to Norwood Square Park, Norwood Centre, the Tribal Family Centre and the Norwood School yard.

[30] It is all residential in the area, which is why there was never a liquor store there. In his opinion, a liquor store does not fit in with the neighbourhood and he feels a liquor store is not needed.

[31] Mr. Forget provided the following information in response to questions by the Board:

- a. The Norwood Village Apartments across the street from the proposed development has affordable housing built into it. Affordable living means there is subsidy available for people living there. This probably means there is support for sober living there. However, he could not provide the Board with anything to confirm that there is a sober living facility at that location.

- b. He believes the problem with prostitutes and drugs in the neighbourhood will be made worse because johns will get a bottle of alcohol from the proposed liquor store before picking up prostitutes.

Ms. O'Reilly

- [32] She is the Board Secretary for the Alberta Avenue Community League.
- [33] She has lived in the neighbourhood for seven years.
- [34] Her main concern is the saturation of liquor stores in the community.
- [35] The neighbourhood is being revitalized and they are trying to clean up the area and support businesses for daily living.
- [36] They welcome businesses to the area but feel there are enough liquor stores.
- [37] If they are trying to accommodate residents so they do not have to drive, a business supporting children would be a better fit. They are trying to limit the businesses that don't support families or children.
- [38] In her opinion, temptations should be separated from people with addictions.
- [39] Many of the 86 signatures received in support of the proposed development are from residents in the Norwood Village Apartments. She is concerned that many of the houses in that area have not been contacted.

v) Rebuttal of the Appellant, Mr. Venkatraman and Mr. Weldemariam

- [40] The closest liquor store is 464 metres away from the subject Site. That does not mean there are too many liquor stores in the area.
- [41] In his opinion, a liquor store will not make things worse than they already are.
- [42] They were unable to speak to everyone in the neighbourhood, but many voiced support for their development.
- [43] Mr. Weldemariam stated that the only reason for refusal is the separation distance.

Decision

- [44] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [45] The proposed development, a Minor Alcohol Sales, is a Discretionary Use in the CB1 Low Intensity Business Zone.
- [46] Section 85.1 of the Edmonton Zoning Bylaw states that:
- Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales.
- [47] In this case, this particular Minor Alcohol Sales Use applied for is 464 metres from another Alcohol Sales Use.
- [48] There are two issues for the Board to consider in this matter. The first issue is whether it is appropriate to allow a variance to the separation distance between Alcohol Sales Uses. The second issue is whether this Discretionary Use should be allowed at this location.
- [49] With respect to the first issue, the Board finds that the variance required with regard to the 500-metre separation distance would 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 464-metre separation distance is significant and the other Alcohol Sales Use is located on the other side of 111 Avenue. 111 Avenue is a fairly wide street that provides a buffer that mitigates the decreased separation distance.
- [50] The second issue for the Board's consideration is the discretionary nature of this development. The Board must be satisfied that this Use is reasonably compatible with surrounding Uses.
- [51] A number of neighbours and the Community League voiced opposition to the proposed development. The concerns raised included the residential nature of the surrounding neighbourhood, the proximity to schools and parks, and the problems with drug use and prostitution in the neighbourhood. It was felt that a liquor store at this location was not compatible with the residential nature of the neighbourhood and it would make the prostitution and drug use problems worse.
- [52] Although the Appellant presented the Board with a petition in support of the liquor store signed by 86 residents who live in area, the Board finds that the concerns related to social issues in the neighbourhood out-weigh those who are in support.

[53] Based on the evidence submitted, the Board finds that the proposed Minor Alcohol Sales Use is not reasonably compatible with the surrounding residential Uses because it is likely to exacerbate the existing prostitution and drug problems in the area. Accordingly, the Board is exercising its discretion to deny this development permit.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. W. Tuttle; Mr. R. Hachigian; Ms. K. Thind; Ms. E. Solez

cc: City of Edmonton, Development & Zoning Services, Attn: Ms. Kim / Mr. Luke

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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.