

SDAB-D-16-200

Application No. 180163072-002

An appeal to revise the size of a Freestanding Minor Digital Off-Premises Sign (approved by the Subdivision and Development Appeal Board, SDAB-D15-097) was **WITHDRAWN**.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 8, 2016
Project Number: 180105494-001
File Number: SDAB-D-16-201

Notice of Decision

- [1] On August 24, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 27, 2016**. The appeal concerned the decision of the Development Authority, issued on July 8, 2016, to approve the following development:

To construct a 39-dwelling Apartment House with General Retail Stores at grade, 6 dwellings of Row Housing, and 3 Live-Work Units

- [2] The subject property is on Plan I24 Blk 18 Lot 1, located at 10922 - 77 Avenue NW; Plan 4855EO Lot 6, located at 10920 - 77 Avenue NW; Plan 4855EO Lot 9, located at 7708 - 109 Street NW; Plan 4855EO Lot 10, located at 7704 - 109 Street NW; Plan 4855EO Lots 7-8, located at 7716 - 109 Street NW; and Plan 4855EO Lot 8, located at 7712 - 109 Street NW, within the DC2 Site Specific Development Control Provision Zone. The 109 Street Corridor Area Redevelopment Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A Development Permit Application, including the plans of the proposed Development;
 - The approved Development Permit; and
 - The Development Officer’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Email from Transportation Services
 - Exhibit B – Submission from the property owner

Preliminary Matters

- [5] The Board Administration Office attempted to contact the Appellant to determine whether he was attending the hearing. The Development Officer and property owner wanted to proceed with the hearing. The Board decided to proceed with the hearing.
- [6] 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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, L. Hradoway*

- [9] The Appellant provided the following reasons for appealing the decision of the Development Authority: The Development Officer did not follow the direction of City Council when the DC2 Bylaw was approved because of the variances that were granted.

ii) Position of the Development Officer, I. Welch

- [10] The Development Officer stated his written submission addressed the reasons for the variances and he was prepared to answer questions.
- [11] The Board clarified with the Development Officer that his submission to the Board is that he has the power to grant variances under Section 11 of the *Edmonton Zoning Bylaw* unless the Direct Control says otherwise. These powers are limited to following the broader directions of Council.
- [12] The Board referred the Development Officer to Section 40 of the *Edmonton Zoning Bylaw*, which states that “the General Development Regulations shall apply to all developments on all Sites, and shall take precedence except where the regulations of a Zone, Overlay or Development Control Provision specifically exclude or modify these provisions with respect to any Use.” The Board stated that the general variance power of section 11 is not a general development regulation and questioned whether the Development Officer relied on any other section to apply Section 11. The Development Officer stated it was his interpretation of Section 11 that his variance power can override the Direct Control Zone.

- [13] In regards to the variance granted to the driveway slope, the Development Officer confirmed that he had the agreement of Transportation Services in a memo dated July 6, 2016. He submitted Exhibit A, which was clarification from Transportation Services with regards to the variance, stating from their perspective “the intent of that regulation was fulfilled with the design as proposed.”
- [14] In regards to the variance granted to landscaping, the Development Officer stated that the Direct Control referenced the Edmonton Zoning Bylaw, which he can vary. Further, the Development Officer considered Section DC2.872.4.3.2.c, which states the Landscaping Plan “incorporates varied sizes and species of native planting materials which are drought tolerant that contribute to the pedestrian-oriented character of the area.”
- [15] The Development Officer reviewed the plans with the Board to explain the variance to the projection. There is a variance on the main floor as well as a slight variance on the second floor. In the Development Officer’s opinion, the plans ultimately conform to the appendix in the Direct Control Zone.
- [16] In regards to the variance granted to the Amenity Space, the Development Officer stated only 4 suites required a variance. However, these suites have access to Amenity Area beyond the minimum required; it is just configured differently than what is set out in the Direct Control Zone.
- [17] The Development Officer confirmed the following sections of the Direct Control Zone also support his decision.
- Section DC2.872.6.1.2 - Perceived massing shall be minimized through the following architectural design elements and treatments including but not limited to: Building setback variations, building orientation, changes in Lane (e.g., recesses and projections) window placement, awnings where viable, articulation around entranceways, roof treatment, and a variety of building finishes, materials, textures, colours, or other features that create an identifiable pattern and sense of human scale.
- Section DC2,872.6.1.6 - The building shall be designed to include the use of different architectural elements and treatments, articulated facades, materials, and colours to add variety, rhythm, break up the massing to provide a sense of human scale to the satisfaction of the Development Officer.
- [18] The Development Officer submitted that the application was circulated to the Edmonton Design Committee who had no objections.

iii) *Position of the Property Owner, D. Gushta*

[19] Mr. Gushta submitted Exhibit B, which is a summary of his argument. They did not agree with the variances granted by the Development Officer as they felt the “approved variances were either not necessary, were incorrect, or should have been written to avoid potential misunderstanding.”

[20] Mr. Gushta stated that in regards to the variance to Amenity Space, the variance could be misconstrued as to the overall extent when it only applies to 4 apartments. The defined minimum for these 4 apartments fully meets the Bylaw and it is only some additional Amenity Area over above the minimums that do not meet the Bylaw, that is a wraparound portion of the deck. Further, this additional portion assists the development in meeting Section DC2.872.4.1.8.f.ii, which states “building articulation to provide architectural variety and interest, and to create balconies and terrace areas for the enjoyment of building residents where appropriate and in consideration of existing adjacent residential uses.”

[21] Mr. Gushta stated in regards to the variance to Driveway slope:

“The Development Permit drawings meet the requirements of Bylaw clause 4.4 and the ramp design is noted as such on the drawings. It is not clear how the City interpreted the wording of the approved Bylaw clause 4.4.3 where the clear requirement is for a "slope of the driveway ramp shall not be greater than 6 percent for a distance of 4.5 metres inside the property line.

In other words, it is our understanding that Transportation prefers to have the entire length of a vehicle to be sitting at a grade of no greater than 6 percent prior to entering a roadway. The approved Bylaw clause 4.4.3 ensures that first 4.5 metres inside the property line (where a vehicle would be prior to entering the roadway) is at a grade that is no greater than 6 percent. Changing this clause through the approved variance effectively removed this assurance.

It is important to note that Transportation specifically approved the ramp design in an internal Memo to the Development Officer dated July 06 2016, Item 13 stating "The proposed ramp slope as shown on Enclosure III, is acceptable to Urban Transportation". This being the case, a variance should not be required.”

[22] Mr. Gushta suggested the Development Officer referenced the incorrect section of the *Edmonton Zoning Bylaw* with regards to landscaping. However, a Landscaped Plan was submitted and approved by the Development Officer. In his opinion, Council agreed that Landscaping would be to the *Edmonton Zoning Bylaw*. Further, Section 55.5(12) states “the Development Officer may, where the Development Officer considers it appropriate, vary any or all of the Landscaping regulations of this Bylaw. Before granting a variance to the Landscaping standards of this Bylaw, the Development Officer may require the

applicant to submit a report from a qualified landscape professional, such as a horticulturist, or landscape architect, explaining and justifying the variance.” Further, they wanted to preserve as many as the mature elm trees as possible and enhance the landscaping in the alleyways.

[23] In regards to the Projection variance, Mr. Gushta stated the following:

BAY WINDOW - The distance quoted in the variance for the bay window from the property line is incorrect. The 0.86 metres measurement is the measurement from the property line to the stoop, not the bay window.

Notwithstanding this error, the bay window extension into the setback was clearly approved by Council. The bay window design was not assessed under DC2.872.6.1.4 which allows bay windows to project into the Setback up to 2 metres. A variance is not required in this instance.

STEPS — There are no "steps" per se in the Development Permit Drawings. Rather, there are "stoops". When read together Bylaw clause 6.1.3 and 6.1.4 the projection of stoops up to 2 metres is permitted (see Reference 1 and 2 below). To make Bylaw clause 6.1.4 work with no variance the setback from property line to the stoop would have to be 1 metres. This means REVCOR would need to shorten the stoop by 0.137 metres.

This was not previously identified as being a problem by the City. A drawing revision could be easily done however, negating the necessity for a variance of 0.137 metres (5.4"). REVCOR would be agreeable to undertake a drawing amendment.

[24] Mr. Gushta stated they conducted a comprehensive community consultation. The Community League wanted to retain as many mature trees rather than planting new deciduous trees, which would destroy the streetscape. They worked extensively with the Community League. The Edmonton Federation of Community League was monitoring the situation closely.

[25] Mr. Gushta confirmed that the application was circulated to the Edmonton Design Committee who had no objections.

iv) Rebuttal of the Development Officer

[26] The Development Officer acknowledged that he and the property owner had a difference in opinion with regards to the variances. In his opinion, the variances are correct and he stands by his decision. There may have been bylaw updates to the Landscaping provisions and that is perhaps why the numbering does not match exactly.

Decision

[27] The appeal is DENIED. The decision of Approval subject to conditions by the DEVELOPMENT AUTHORITY is CONFIRMED subject to the following amendment to only Variance #4 listed on the Development Permit:

- i. The distance from the stoop to the property line along 77 Avenue (front lot line) shall be allowed to project into a Setback to a maximum of 2.14 metres. (Section DC2.872.6.1.4)

Reasons for Decision

[28] The proposed Uses are Listed Uses in the DC2 Site Specific Development Control Provision.

[29] The Board is governed by Section 641(4)(b) of the *Municipal Government Act* which states in part, “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.”

[30] With regards to the variance on Amenity Space, the Board accepts the evidence of the property owner that the four apartment units in question meet the minimum requirements. The wraparound portion of the deck is in addition to the minimum requirements and further complies with Section DC2.872.4.1.8.f.ii, Section DC2.872.6.1.2 and Section DC2.872.6.1.6.

[31] With regards to the variance on Driveway Slope, the Board accepts the evidence of the Development Officer that Transportation Services has agreed to the ramp slopes.

[32] With regards to the variance on Landscaping, the Board accepts the evidence of the Development Officer that a detailed Landscaping Plan was submitted in accordance with the *Edmonton Zoning Bylaw* and pursuant to Section 55.5(12) of that Bylaw, the Development Officer may where consider appropriate vary the Landscaping regulations. The Board does note that after considerable consultation with the neighbourhood, there was a preference to retain mature trees on the site opposed to new planting.

- [33] With regards to the variance on projection, the Board accepts the evidence of the property owner that no variance is required for the bay window and a smaller variance is required for the stoop. The Board is of the opinion, applicable to this proposed development only, that it would be in keeping with the directions of Council to allow the Development Officer the ability to grant this extremely minor variance. Further, the Board finds the proposed plan complies with Section DC2.872.6.1.2, Section DC2.872.6.1.3 and Section DC2.872.6.1.6.
- [34] Based on the evidence provided and notwithstanding the amendment to one of the variances, the Board finds that the Development Authority did follow the direction of City Council in approving the proposed development. Therefore, in accordance with Section 641(4)(b) of *the Municipal Government Act*, the Board may not substitute its decision for the development authority's decision and the appeal is denied.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. M. Young; Ms. M. McCallum; Mr. L. Pratt; Ms. C. Weremczuk

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.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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.