



**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

Outfront Media
11703 170 St
Edmonton AB
T5M 3W7

Date: September 2, 2016
Project Number: 224516627-001
File Number: SDAB-D-16-202

Notice of Decision

[1] On August 25, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on August 2, 2016. The appeal concerned the decision of the Development Authority, issued on July 15, 2016, to refuse the following development:

install a Freestanding Off-premises Sign (C.P.R Parcel)

[2] The subject property is on Plan 5595KS Blk 4 Lot H, located at 6135 - 99 Street NW and Plan 690EO Blk RLY, located at 9440 - 34 Street NW, within the IB Industrial Business Zone.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Registered mail delivery confirmation;
- A Sign Combo Permit Application;
- The Refused Development Permit with drawings attached; and
- The Development Officer's written submissions.

[4] The following exhibit was marked at the hearing:

- i) Exhibit A – Appellant's Power Point Presentation.

Preliminary Matter

[5] 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.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Mr. M. Levine

- [8] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [9] The proposed Sign had been permitted previously, in 1993 and 1999, as it was fully compliant with the old Land Use Bylaw. Despite not being fully compliant with the new *Zoning Bylaw* in 2008, it was approved once again for a permit after it was modified to enable three advertisements to appear in rotation without LED display.
- [10] The Old Land Use Bylaw did not address any separation distance issues relating to two-sided Signs. Although the *Zoning Bylaw* prescribes minimum separation distances for these Signs, the proposed Sign and the conflicting Sign both existed in 2008, and the proposed Sign received approval from the Development Authority.
- [11] Although the permit for the proposed development expired in 2013, Outfront Media is now attempting to bring all of their Sign permits up to date. The Appellant further indicated that he could not explain as to why the subject permit had lapsed, as he was not with the company at the time.
- [12] The Sign does not interfere with the amenities of the neighbourhood. It has been there for 23 years and has never received any complaint. It does not affect neighbouring parcels of land. The train tracks located near the Sign would have a far more significant impact on the neighbourhood than any Sign would.
- [13] The proposed development does not clash with the industrial nature of the area, and is located over 300 metres away from the nearest residential area. At no point have any complaints been received from nearby landowners or tenants.
- [14] The removal of the Sign could reduce revenue and possibly decrease employment in the Appellant company.
- [15] He is asking for a 41-metre variance to the *Zoning Bylaw*'s required separation distance between Signs. Nothing has changed since 2008, the time of the last approval, and there is no other suitable location where the Sign could be installed.

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

- [16] The Development Officer stated that he included an additional address on the Refused Development Permit because the subject Site is a parcel of land owned by Canadian Pacific Railway that encompasses both addresses.
- [17] With respect to the previous application that was approved in 2008, he was not the Development Officer that approved it, but he expects that, as there was no variance

granted in relation to that application, the previous Development Officer likely believed that the old permit was merely being renewed. There is nothing in the permit from 2008 stating that the Sign was being modified.

- [18] If a Sign is non-conforming, it has to be renewed before it expires in order to retain its non-conforming character. Once the permit lapses, the Sign loses its non-conforming nature, and a new application is required. It appears that, in 2008, both the proposed Sign and the conflicting Sign located within the minimum required separation distance were both non-conforming and existing. The difference here is that the owner of the conflicting Sign kept renewing its permit in a timely manner and, therefore, was able to conserve the non-conforming element of that Sign. The permit for the proposed development lapsed in 2013. Therefore, the proposed development must be assessed according to the current *Zoning Bylaw*, which prescribes a separation distance between the two Signs.
- [19] The largest concern behind the separation distance requirement is the proliferation of Signs. The Development Authority is looking to control the number of Signs that can be erected within a certain radius. Although the area is industrial in nature, proliferation remains a concern. The Development Authority is merely trying to follow City policy expressed via the *Zoning Bylaw*.
- [20] While traffic safety is another concern, the proposed development is not a digital Sign, which would have a much greater impact on traffic safety.

iii) Rebuttal of the Appellant

- [21] The Appellant offered no rebuttal.

Decision

- [22] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following conditions:
- i)* The Freestanding Off-Premises Sign permit expires on September 9th, 2021, five years from the date this decision is issued.
 - ii)* The proposed Freestanding Off-premises Sign shall comply in accordance with the approved plans submitted.
 - iii)* The intensity of the exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens. (Reference Section 59.2(4)).
- [23] In granting the development, the following variance is allowed to the *Zoning Bylaw*:
- i)* The separation distance requirement prescribed by Section 59F.3(2)(g) is varied 41 metres from 100 metres to 59 metres.

Reasons for Decision

- [24] The proposed development is a Discretionary Use in the IB Industrial Business Zone.
- [25] The Board accepts the submission of the Appellant that the existing Sign will have no material impact on the value of the surrounding properties, and it is indeed in keeping with the industrial nature of the neighbourhood.
- [26] The Board notes that this is a paper-based Sign which does not contribute to any light pollution or distracting digital images that would affect traffic safety in the area.
- [27] The Board determines that, as the Sign is an existing Sign, having been originally built in 1993 and modified in 2008, it does not contribute to the further proliferation of Signs in the City of Edmonton.
- [28] The Board notes there were no complaints received with respect to the proposed Sign, nor did anyone appear at the hearing to oppose the proposed development.
- [29] In conclusion the Board notes that this is an industrial neighbourhood, and this Sign is in keeping with the industrial appearance of the neighbourhood. The proposed development will 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.



Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. W. Tuttle, Ms. E. Solez, Mr. A. Bolstad, Mr. K. Hample

c.c. City of Edmonton, Sustainable Development Department, Attn: Mr. S. Ahuja

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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

Outfront Media
11703 - 170 Street NW
Edmonton AB T5M 3W7

Date: September 2, 2016
Project Number: 220466051-001
File Number: SDAB-D-16-176

Notice of Decision

Note: on July 27, 2016, matter was tabled to August 25, 2016

[1] On July 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 29, 2016. The appeal concerned the decision of the Development Authority, issued on June 16, 2016, to refuse the following development:

Install (1) Freestanding Off-premises Sign (Outfront Media), existing without permits

[2] The subject property is on Plan RN43 Blk 19 Lots 16-17, located at 9549 - 118 Avenue NW, within the CB2 General Business Zone. The Alberta Avenue Pedestrian Commercial Shopping Street Overlay 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:

- The Refused Development Permit with attachments;
- A Development Permit Decision from 1994;
- Registered Mail delivery confirmation;
- A Sign Combo Permit application; and
- The Development Officer's written submissions.

Preliminary Matter

[4] At the outset of the appeal hearing, the Board made and passed a motion to raise the hearing for SDAB-D-16-176.

[5] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Mr. M. Levine

- [8] After learning of the Alberta Avenue Pedestrian Commercial Shopping Street Overlay's requirement for a community consultation at the outset of the previous hearing, the Appellant received materials, including a map of the parcels of land within a 60-metre radius of the subject Site, from the Development Officer to assist him in conducting the consultation. He visited every property and made multiple attempts to contact the land owner of every parcel of land outlined on that map.
- [9] The Appellant provided a spreadsheet to the Board showing all the locations and entities affected by the Sign and the results of his first and second attempts to contact them. No objection was noted. He also asked for feedback forms and received six of them. None of the feedback forms he received voiced any objection to the proposed development.
- [10] He met personally with the director of the Alberta Avenue Business Association and the president of the Community League. They both indicated that they were not opposed to the Height of the Sign.
- [11] While the neighbourhood within which the subject development is located is largely pedestrian in nature, the specific location of the proposed Sign is along a stretch of the neighbourhood that is currently less developed than the rest of the area. The proposed Sign is located in a used car lot across the alley from a vacant restaurant. It is certainly a pedestrian neighbourhood, but it is not developed to the same extent as Whyte Avenue, where store fronts span the entire length of the street uninterrupted. The subject Site is located in an area where shops are less frequent and parking lots still exist.
- [12] Based on the community consultation and the location of the proposed development, the proposed development would not interfere with the amenities of the area or affect neighbouring parcels of land.

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

- [13] The Development Officer confirmed that the Development Authority cannot vary the Height requirements contained in the *Zoning Bylaw*. The decision was out of his hands, and it is up to the Board to decide whether or not granting the Height variance would be appropriate.
- [14] The City eventually noticed that this particular Sign did not have a valid permit for approximately 20 years and sent correspondence some time ago to the individuals responsible for the Sign at the time. The onus is still on the Applicant to keep their

permits up to date. It was not until recently that the City acquired new software that allows them to identify all Signs in the City with permits that have expired.

- [15] With respect to the community consultation, he acknowledged that the Appellant did the best he could to consult all the affected parties in the area. The Development Authority also issued letters to the affected neighbours indicating that the Appellant would be conducting a consultation.

iii) Rebuttal of the Appellant

- [16] In rebuttal, the Appellant clarified that, for this particular Sign, Outfront Media took the initiative in discovering that the proposed development lacked a valid permit and subsequently submitting a permit application. They were not notified by the Development Authority that the proposed development required an up-to-date permit.

Decision

- [17] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The Development is GRANTED, subject to the following conditions:

- i) The Freestanding Off-Premises Sign permit expires on September 9th, 2021, five years from the date this decision is issued.
- ii) The proposed Freestanding Off-premises Sign shall comply in accordance with the approved plans submitted.
- iii) The intensity of the exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens. (Reference Section 59.2(4)).

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

- i) The maximum Height restriction prescribed by Section 821.3(23)(a) is varied 2 metres from 6 metres to 8 metres.

Reasons for Decision

- [19] The proposed development is a Discretionary Use in the CB2 General Business Zone.

- [20] The Alberta Court of Appeal in *Thomas v Edmonton (City)*, 2016 ABCA 57, ruled that satisfying the community consultation requirements in the Mature Neighbourhood Overlay is a condition precedent to issuing a development permit. The same community consultation requirements are found in the Alberta Avenue Pedestrian Commercial Shopping Street Overlay. The Board is satisfied that the community consultation undertaken by the Appellant substantially complies with the requirements of the Overlay.

- [21] There were no objections from any members of the community. Indeed, the Appellant contacted a church, the community league and the business association. None of whom object, and all of whom supported the proposed development. The Board further notes that no one appeared in person at the hearing to oppose the proposed Sign.
- [22] The Board accepts the Appellant's submission that the proposed sign has been in existence for a number of years without complaint and determines that the proposed Sign will not unduly affect the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. W. Tuttle, Ms. E. Solez, Mr. A. Bolstad, Mr. K. Hample

c.c. City of Edmonton, Sustainable Development Department, Attn: Mr. S. Ahuja

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.