

Edmonton Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 123459045-004
File Number: SDAB-D-15-306

Notice of Decision

This appeal is dated November 27, 2015, from the decision of the Development Authority for permission to install a Fascia Major Digital On-premises Sign (PCwhoop Electronics / LED Pros).

The development permit application was refused because:

- (a) the proposed Sign will overshadow the building front and adversely impact the architectural character of the building;
- (b) the proposed Sign does not comply with the policies of the Calgary Trail Land Use Study with respect to signage; and
- (c) the mass of the signage on the referred face of the wall negates the character and appearance of the building, and adds to the proliferation of Digital Signs.

The subject Site is on Plan 2657NY Block 80 Lot A, located at 6029 - Gateway Boulevard NW. The subject Site is zoned CB1 Low Intensity Business Zone.

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

The appeal was heard by the Subdivision and Development Appeal Board on December 16, 2015.

Summary of Hearing:

1. At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
2. Prior to the hearing the following information was provided to the Board:
 - Development Officer's written submissions, received by the Board on December 11, 2015; and
 - Canada Post Registered Mail delivery receipt signed by "S Perez" on November 20, 2015.

The Board heard from Mr. P. McGie, with LED Pros, and Mr. S. Perez, the Appellant (PCwhoop Electronics), who provided the following submissions:

3. They wanted to replace an existing backlit sign for the business with an LED sign.
4. Prior to putting up the sign, they contacted the City of Edmonton 311 information telephone line and were advised that if they were changing the existing sign to an LED sign, no new development permit was required.
5. Seven days later, they received a letter from the City of Edmonton advising that they required a permit for the new sign. They filed for the permit and were advised that the sign is a Major Digital Sign as defined in the *Edmonton Zoning Bylaw* (“the *Bylaw*”).
6. They changed the sign to comply with what the City would permit, making the sign a Minor Digital Sign, the difference being that the new sign displays only words (as opposed to colourful images), and changes every seven seconds (rather than less than every six seconds).
7. They seek approval for a Minor Digital Sign and believe that because of the small size of the sign (one-fifth of the size of the nearest surrounding sign) and the fact that it only features words, not images, it fits within this definition.
8. When asked by the Board whether the sign fits within the architectural character of the adjacent buildings, they advised that the sign suits the look and feel of the area because it is located in a strip mall, there are similar Major and Minor backlit Signs down the street from their business (Calgary Trail), and they face an industrial area.
9. When asked if they received complaints about the sign from other tenants, they advised the Board that they had not received complaints, and in fact, they had been asked to build signs for other businesses in the area.

The Board heard from Mr. S. Ahuja, representing the Sustainable Development Department, who provided the following submissions:

10. Mr. Ahuja confirmed that the original sign has been up for six years, existing without a development permit. He also confirmed that the City had received a complaint about the Appellants’ sign.
11. There is a large, freestanding sign owned by Pattison located directly above the Appellants’ sign, which was approved by the Subdivision and Development Appeal Board at an earlier date. Most of the other signs in the immediate area exist without permits.
12. The Appellants’ sign was refused, in part, because the entire face of the building is covered by signs.

13. When asked by the Board whether the fact that the Appellants seek a Minor Digital Sign (as opposed to a Major Digital Sign) changes his decision to refuse the development permit, Mr. Ahuja advised the Board that there is still too much signage relative to the size of the building, and they do not want to set a precedent of allowing every business to have a Minor Digital Sign.
14. Mr. Ahuja was asked to comment about whether or not he agreed with the notion that the Pattison sign is permitted, even though Pattison is not a tenant of the building, and that if one of the signs is going to be permitted, it seems that it should be the sign for the tenant business. Mr. Ahuja agreed, but reiterated that there are too many signs on the building; he acknowledged that had the Appellants applied for the development permit prior to the Pattison sign being approved by the Subdivision and Development Appeal Board, their sign would likely have been approved.

The Appellants provided the following submissions in rebuttal:

15. The sign owned by Pattison is an off-premises sign and Pattison is not a tenant of the building. They are a business in the lot and should be able to promote their business. They rely on their sign to bring in additional business and will suffer undue hardship if the Board refuses the development permit.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

Reasons for Decision:

The Board finds the following:

1. Minor Digital On-premises Signs are a Discretionary Use in the Low Intensity Business Zone (CB1). The Board notes that this application was originally for a Major Digital Fascia On-premises Sign. The applicant, at the beginning of this appeal, requested that it be changed to a Minor Digital On-premises Sign, and the Board has considered the proposed development as such.
2. The Development Officer confirmed that the proposed sign complies with all regulations in the *Edmonton Zoning Bylaw* with the possible exception of Section 59.2(6), which states that:

For all Sign Applications, the Development Officer shall have regard for the scale and architectural character of the building and the land use characteristics of surrounding development. The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone.

3. The issue before the Board is whether or not the proposed sign, as a discretionary use, should be allowed, given its potential affect on the surrounding land uses, and, similarly, whether or not the sign will be at odds with the scale and architectural character of the building and land use characteristics of the surrounding development.
4. The building that the proposed sign is on is a single story, cinder block painted commercial strip mall. The proposed sign is 0.86 m tall, and 5.12 m long, which is smaller than many of the other fascia and freestanding signs on the building and in the general area.
5. In addition, the sign does not project above the roofline of the single story building, and is linear in nature, which matches the linear nature of the single story strip mall. The Board finds, therefore, that the sign is in keeping with the architectural character of the building. As for the surrounding land uses, the Development Officer acknowledged that the area has many similar signs, and accordingly this sign is characteristic of the neighbourhood.
6. For those reasons, the Board finds that the proposed sign is in accordance with Section 59.2(6), and is a proper discretionary use for the area.
7. The Development Officer also made reference to the Calgary Trial Land Use Study. First, the Board notes that the Calgary Trail Land Use Study does not actually forbid Fascia On-premises Signs. In fact, it encourages the replacement of old signs with newer signs. It does discourage the development of freestanding “billboards”, but the present application is for a Fascia On-premises Sign, which would not be considered a “billboard”.
8. Further, the Calgary Trial Land Use Study is not a statutory plan within the definition of the *Municipal Government Act*. Section 616(dd) of the *Municipal Government Act* defines statutory plans as “an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4”. The Calgary Trial Land Use Study does not meet the above definition. Not only is it not a statutory plan within the meaning of the *Municipal Government Act*, it is not a Bylaw of the City of Edmonton either, being approved by a council resolution on September 11, 1984.
9. Section 687(3) of the *Municipal Government Act* sets out the documents that this Board must comply with; it does not list any document class that would include a document such as the Calgary Trial Land Use Study. The Board finds that the proposed development is in compliance with and is not at odds with any statutory plan as defined within the *Municipal Government Act*. As a result, and given the Board’s finding that the proposed development does not constitute a use incompatible with the neighbouring land uses, the appeal is allowed and the development is granted.

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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 160474324-004
File Number: SDAB-D-15-307

Notice of Decision

This appeal is dated November 12, 2015, from the decision of the Development Authority for permission to replace a Roof Off-premises Sign with a roof mounted Minor Digital On-premises Off-premises Sign (1319416 ALBERTA LTD.).

The development permit application was refused because of an excess in the maximum allowed Floor Area for a Garage Suite.

The subject Site is located on Plan 209AN Block 28A Lot 17, located at 13315 - 126 Avenue NW. The subject Site is zoned IM Medium Industrial Zone.

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

The appeal was heard on December 16, 2015.

Summary of Hearing:

1. At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
2. The Chair advised the Appellant, Mr. D. Gallo, that he gave him a legal opinion a couple of years ago and asked all parties, including the Development Officer, Mr. Ahuja, whether this raised any concerns with respect to bias or fairness. All parties agreed it did not.
3. Prior to the hearing the following information was provided to the Board:
 - Written submissions from the Appellant's legal counsel, Ms. J. Agrios, received by the Board on December 10, 2015;
 - Canada Post Registered Mail delivery receipt signed by "1319416 alberta ltd dominic gc", received by the Board on November 10, 2015;
 - Sign Combo Permit Application; and
 - Development Officer's Written Submissions, received by the Board on December 11, 2015.

The Board heard from Ms. J. Agrios, Counsel for the Appellant, who provided the following submissions:

4. Ms. Agrios noted the proposed development was refused for five reasons. She addressed each reason as follows.
5. First, digital signs cannot be rooftop signs pursuant to the *Edmonton Zoning Bylaw*, so a variance is required. The Appellants already has a permit for a rooftop sign, but a variance is required to replace the existing sign with a digital sign. Ms. Agriod provided three examples of instances where the Board granted similar variances (SDAB-D-11-285; SDAB-D-14-038; SDAB-D-14-272).
6. Second, the proposed development exceeds the maximum height allowed under Schedule 59G.3(3)(g) of the *Edmonton Zoning Bylaw*. Ms. Agrios argued, however, that the Development Officer erred in calculating the maximum allowable height. She argued that because the proposed development is a rooftop sign, the maximum height allowed in the IM Medium Industrial Zone is 18 metres (Section 420.4(4)). She argued that the Appellants already have a permit for a sign that is 18 metres high, so they are actually proposing to lower the total height of the sign by three metres because the new, digital sign is only 15 metres high.
7. Third, the separation distance exceeds that allowed under the *Edmonton Zoning Bylaw*. If the size of the sign is reduced, the proposed development only requires a 200 metre separation distance from the next closest signs. She advised the Board that the closest sign is 367 metres away, and that there is a non-digital sign to the North of the proposed development. The Development Officer calculated the distance between the signs at 102 metres, which means that a variance is required.
8. Ms. Agrios argued that commuters driving along St. Albert Trail cannot view both signs at the same time and provided photographic evidence to that affect. She argued that unless someone was actively looking for the sign, they are unlikely to see it.
9. Fourth, with respect to the proposed development not being in keeping with the architectural character of the building, Ms. Agrios argued that there is “nothing architectural about [the building]” and it is a hodge podge of older, industrial buildings.
10. Finally, the proposed development was refused because the light emanating from the sign will impact properties located to the West and South of it. She argued that the building located to the West of the proposed development has no windows on it (it is a blank wall). The building to the South of the proposed development is an auto repair shop, which also does not have windows (just bays to move equipment in and out of the building).
11. Ms. Agrios noted there are no letters of objection to the proposed development. She provided a letter from the owner of the property to the East of the proposed development indicating that light emanating from the sign is a positive factor because it will project into a pitch black alley.

12. Ms. Agrios advised the Board that the Appellants' preference is to have a pole-mounted sign, but they would settle for a smaller, roof-mounted sign if that is what the Board is prepared to grant.
13. When asked by the Board about whether the proposed sign is a rooftop sign, Ms. Agrios referred to the definition of "Roof Sign" in the *Edmonton Zoning Bylaw*, which states that a roof sign is "... any Sign erected upon, against, or above a roof, or on top of or above, the parapet of a building." She argued that if a roof sign means that it must be affixed to the building, there is no reason why the phrase "against or above" would be included in the definition.
14. When asked about the impact of Schedule 59G.3(3)(g) and the intent of concealing structural elements from view, Ms. Agrios argued that the pole mount sits behind the building and has less viewable structure than a sign that is affixed to the roof because the pole mount has one leg and the traditional sign has three legs.

The Board heard from Mr. S. Ahuja, representing the Department of Sustainable Development, who made the following submissions:

15. Mr. Ahuja advised the Board that the original approved sign was 6.096 metres (Exhibit B).
16. He advised the Board that Schedule 59G.3(6)(b) states that the maximum height for Minor Digital Off-premises Signs is eight metres. He referred to the definition of "Freestanding Sign" and argued that the proposed development as originally applied for is not a freestanding sign.
17. He advised the Board that there is a gas station and restaurant nearby, both of which will be adversely affected by the light of the sign.
18. He advised that the three signs approved by the Subdivision and Development Appeal Board in the past (referred to by Ms. Agrios in her submissions) were all smaller than the proposed sign.
19. When asked by the Board whether there was any planning reason a variance should not be granted to allow the Appellants to have a Digital Roof Sign, Mr. Ahuja argued that the maximum height allowed for Roof Signs around the City is eight metres. The *Edmonton Zoning Bylaw* does not contemplate Digital Roof Signs because the City wants to avoid having Digital Roof Signs.

Ms. Agrios made the following submissions in rebuttal:

20. Ms. Agrios disagrees with Mr. Ahuja about the specs of the sign that was previously approved.

21. With respect to whether or not the test for granting a variance has been met (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), Ms. Agrios advised the Board that she did not hear those arguments presented to the Board, and that she only heard arguments about the size of the sign and the governing regulations.
22. When asked by the Board whether the arguments raised about the light from the sign having an impact on the nearby gas station and restaurant, Ms. Agrios argued that she found that argument strange, given that the gas station is completely lit up and has floodlights.
23. With respect to the fact that the *Edmonton Zoning Bylaw* does not contemplate Digital Rooftop Signs, Ms. Agrios agreed that the legislation is silent on this particular type of sign, but reiterated that Roof Signs can be up to 18 metres high and Digital Signs can be eight metres high.
24. When asked if it is feasible to lower the sign slightly so that it would not be substantially over the eight metre allowable height, Ms. Agrios argued that if there sign were lowered, it would not be visible from St. Albert Trail.

Decision:

The appeal is **DENIED** and the decision of refusal of the Development Authority is **CONFIRMED**.

Reasons for Decision:

The Board finds the following:

1. This is an appeal from a refusal by the Development Authority for an application to replace a roof Off-premises Sign with one roof mounted Minor Digital On-premises Off-premises Sign.
2. The sign combo permit application submitted by the Appellant clearly checks off that it is a Minor Digital Sign, that it will be used for both On- and Off-premises copy, and that it is a Roof Sign.
3. There is no use classification in the *Edmonton Zoning Bylaw* for a “roof digital sign”. There are however, two discretionary use classes in the IM Medium Industrial Zone, which describe the proposed development being Roof On-premises Signs and Roof Off-premises Signs.

4. The Board notes that there is no Use class for a Roof On-premises Off-premises Sign. One reason for this could be the existence of Section 59.2(15) which states “Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall not be Roof Signs, Projecting Signs or Temporary Signs.”
5. The *Edmonton Zoning Bylaw* clearly contemplates that signs mounted on the roof of the building are not going to be digital and will have static copy.
6. Accordingly, the Board will consider the regulations pertaining to Roof Signs and Minor Digital On-premises Off-premises Signs when disposing of this appeal.
7. The first reason for refusal from the Development Authority relates to Section 59.2(15) as cited above. The Appellant conceded that the proposed sign was not in accordance with this provision and accordingly, requested a variance.
8. The Board declines to waive the requirements of Section 59.2(15) of the *Edmonton Zoning Bylaw*, and declines to exercise its discretion to grant these discretionary uses.
9. In the IM Medium Industrial Zone, the *Edmonton Zoning Bylaw* requires digital signs to be no greater than eight metres in height, pursuant to Schedule 59G.3(6)(b).
10. The Application received by the Development Authority and refused by it on November 5, 2015, was for a Digital Sign mounted on top of the roof of a building with a total height of 18 metres. Although the Appellant indicated that it may be willing to live with a sign 15 metres in total height, the Board notes that what was applied for and what is under appeal is a refusal for an 18 metre structure.
11. The Board notes the general purpose of the IM Medium Industrial Zone, as stated in Section 420.1, includes the sentence “any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site.”
12. The sign applied for is 18 metres in height and is 62.78 square metres in size. The Board finds that a digital sign of that height and size will more likely than not be visible for a radius extending far beyond not only the boundaries of the Site, but also the immediate neighbourhood.
13. The Appellant provided no evidence as to how far this sign would be visible. It is the Board’s view that the impact of the sign, because of its height and size, will be felt beyond the 60 metre notification zone, and will potentially be negatively impactful on several number of neighbourhoods.
14. While that would be enough to dispose of the appeal, the Board notes that in Schedule 59G, all digital signs of all types are required to be no more than eight metres in height.

15. The height of the proposed structure, whether it is 18 m or 15 m, will, for the reasons outlined in paragraph 13, will vastly increase the radius of visibility for this sign, which has a large copy area of 62.78 metres.
16. The Board would also, therefore, decline the variance needed for height as the needed variance would increase the potential negative impact of a bright sign changing its copy as often as every 6 seconds. This could negatively impact a wide swath of the surrounding area.
17. It was conceded that the proposed sign was also within the required minimum separation distance, of another Digital Sign, even if its size and Height were reduced. The Appellant requested a variance to the separation distance between digital signs. The Board declines to grant this variance as well. Although the immediate area is industrial, the Board finds that the sign will be visible from the intersections of Yellowhead Trail and St. Albert Trail. The existence of the sign so close to another Digital Sign adds to a rapid succession of digital signs viewable by drivers moving North on St Albert Trail, which the Board finds would reduce the amenities of the area.
18. For those reasons, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land and therefore the appeal is denied.

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*, 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.

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.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board