Edmonton Subdivision and Development Appeal Board

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Date: December 18, 2015
Project Number: 176994655-002
File Number: SDAB-D-15-286

Notice of Decision

This appeal dated October 28, 2015, from the decision of the Development Authority for permission to install a Freestanding On-premises Sign / Minor Digital On-premises Sign (LaZboy).

The development permit was refused because of a deficiency in the minimum required separation distance between the proposed Freestanding On-premises Sign/Minor Digital On-premises Sign and an existing Freestanding Off-premises Sign and an excess in the maximum allowable number of Freestanding Signs for the Site.

The subject site is on Plan 9421795 Blk 2 Lot 6, located at 10804 - 170 Street NW. The subject Site is zoned CB2 General 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 on December 3, 2015.

Summary of Hearing:

1. 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.

2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:

    - Written submissions from the Development Officer dated November 2, 2015

    - Written submissions including photographs from the Appellant, dated November 27, 2015

    - An email dated October 6, 2015 from Transportation Services stating that the proposed sign location is acceptable provided certain conditions are met

Position of the Appellant

3. The Board heard from Bryan Romanesky of Permit Masters, the Appellant.

4. Mr. Romanesky referred to photographs and graphic representations of the subject sign and gave an overview. He said that the sign has been in the same location for the past 21 years, ever since it was first approved by the City. The changes to the original sign are essentially renovations, which include an enclosure of the two existing sign posts and a change in the box portion of the sign atop the posts. The renovated sign now has a digital component. It is classed a Minor Digital Sign because the message duration is at least six seconds. The newly renovated sign is the same height as the original sign and the dimensions of the renovated sign meet bylaw requirements.

5. Mr. Romanesky addressed the two reasons why the application was refused by the Development Officer. The first issue is the distance from another sign, an Off-Premises Sign owned by Pattison Signs. The distance between these two signs is 73 metres. It should be 100 metres to conform to the zoning bylaw.

6. Mr. Romanesky submitted that it is unfair to deny the subject sign a permit when presumably the same variance was granted for the Pattison sign in 2012. There is also a Wendy's sign that is about the same distance from the Pattison sign, indicating that a similar variance would have been granted for the Wendy's sign.

7. Further to the issue of separation distance, Mr. Romanesky noted that 170 Street is a broad arterial road with four lanes of traffic in both directions. It creates a substantial physical separation.

8. With respect to the second reason for refusal – the number of signs – Mr. Romanesky noted that the subject sign is located on a large commercial site that is about 250 metres long. However, the zoning bylaw stipulates the number of allowable signs per site irrespective of the size of the site. Furthermore, this is a unique site because most of the buildings are positioned near the rear of the site, removed from 170 Street. Therefore signs are critical for businesses requiring visibility.

9. Finally, Mr. Romanesky noted the business owner's pride of ownership. LaZboy renovated the sign at a cost of $250,000.00 and received an award from the sign advertising industry.

10. Mr. Romanesky was joined by Mr. Moussa of LaZboy to answer questions from the Board. They clarified that LaZboy owns the property where their business is located and they have an agreement with Melcor for placement of the subject sign on Melcor's property. There are a total of five titles and five corresponding property owners that comprise this site. The subject sign was renovated in September of 2013. There are six signs on the subject site and all have been there for about 21 years.

Position of the Development Authority

11. The Board heard jointly from Sachin Ahuja and Jeremy Folkman, representatives of Sustainable Development.

12. They noted that the subject sign application was reviewed as a new sign. They cannot regard it as merely a renovation of an existing approved sign. Because it has video or moving pictures, it is a new Use class and must be reviewed accordingly.

13. They clarified that the subject sign is actually a Minor On-Premises Digital Sign because it was displaying images for a duration of six seconds or more.

14. Separation distance only became an issue when the subject sign became a digital sign. When the Pattison sign was approved, the subject sign was not digital and thus there would not have been a variation necessary for the Pattison sign. The Development Officer did not check the distances between the other existing signs on the site because separation distance is not a requirement for non-digital signs.

15. The old Land Use Bylaw did not put a limit on the number of signs per site, but the current Zoning Bylaw limits the number to four per site. If an applicant feels that there is something unique about their site to warrant exceeding the limit of four signs, there is an option of presenting a comprehensive site plan. In answer to a Board question about comprehensive site plans, it was clarified that a comprehensive site plan involves a number of other factors and considerations other than merely site size.

16. The Zoning Bylaw distinguishes between “site” and “lot”. A number of continuous lots are considered a single site unless they are divided by a public roadway.

17. In answer to questions from the Board about the issue of “sign proliferation”, it was submitted that sign proliferation occurs not only by increasing the number of signs but intensifying the quality of the signs.

Rebuttal

18. In rebuttal, Mr. Romanesky noted that when this application was originally made, the subject sign had video. Now that has been changed. After consultation with the Development Officer, the sign has been designed to hold an image for at least six seconds.

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, subject to the following **CONDITIONS**:

1. That the north face, visible to southbound traffic, shall feature a hold time of 6 seconds or greater.

2. The permit shall be approved for a term of not longer than 5 years, at which time the applicant shall apply for a new development permit for continued operation of the sign.

3. That, should at any time, Transportation Services 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 Services.

4. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services 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.

5. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

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, Transportation Services will require a safety review of the sign prior to responding the application.

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

1. A variance of 27 metres in the required separation distance of 100 metres as provided by Section 59F.3(5)(d)

2. A relaxation of the maximum number of four signs to six (6) on a Site as provided by Section 59F.3(5)(i)

Reasons for Decision:

1. The Board accepts the submissions of the Appellant with respect to the fact that number of signs on the subject Site have not changed. The Board further accepts that the proposed development does not constitute a change in the location or size of the subject sign.

2. The Board does not share the perspective of the Development Authority with respect to the issue of sign proliferation. The Board does not accept that approving this sign would increase sign clutter or proliferation. The Board accepts the evidence that the same number of permitted signs have existed in the same location since 1994.

3. The Board accepts that this is an unusually large site on a busy commercial corridor and it is therefore reasonable to give consideration to relaxing the maximum number of permitted signs per site.

4. The subject sign and the Pattison sign are separated by a wide arterial road with eight lanes. The Board is satisfied that a variance of 27 metres in the required separation distance will not have an adverse effect.

5. There was no opposition to this sign from Transportation Services. Thus the Board is satisfied that the sign does not present an undue traffic safety concern.

6. There was no letters of opposition to the proposed development and no one appeared at the hearing to oppose the development.

7. Based on the foregoing reasons, the board is satisfied that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with the neighbourhood or affect the use, enjoyment or value of the neighbouring parcels of land

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. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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Date: December 18, 2015
Project Number: 176027833-003
File Number: SDAB-D-15-287

Notice of Decision

This appeal dated November 4, 2015, from the decision of the Development Authority for permission to construct an Accessory Building (rear sea can storage container, 6.05m x 2.42m), existing without permits.

The development permit was refused because a Sea Can is not considered to be similar to or better than the standard of surrounding development in the neighbourhood and therefore does not meet the General Performance Standards in residential neighbourhoods. A Sea Can is also primarily used on Industrial sites and is therefore not suitable for a residential site. There is also a deficiency in the minimum required distance between the Accessory structure and the Side Lot Line.

The subject site is on Plan 1324KS Blk 7B Lot 3, located at 8912 - 151 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

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 3, 2015.

Summary of Hearing:

1. 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.

2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:

    - Written submissions from the Appellant including photographs and letters of support from neighbouring property owners

    - Written submissions from the Development Officer

- A revised Site Plan showing the subject Accessory Building positioned to provide for the required Side Setback of 0.9 metres

Position of the Appellant

3. The Board heard from Bryan Romanesky of Permit Masters, the Appellant.

4. Mr. Romanesky referenced the letters of support from neighbouring property owners. He made special reference to one letter which noted that the subject sea can is of better quality than other structures in the neighbourhood.

5. Mr. Romanesky referred to photos to show that the sea can is almost entirely shielded from view by a fence and surrounding trees. He also noted that it is located between two garages which further limit its visibility.

6. With respect to the first reason for refusal – the General Performance Standards set out in Section 57.2 – Mr. Romanesky argued that this section refers to structural and building standards rather than aesthetic standards. He said that the sea can is made of material that is of a higher standard than wood. It is stronger and non-combustible. Furthermore, the sea can material is similar to materials that can be purchased at Home Depot for building garden sheds.

7. Mr. Romanesky submitted that Section 57.2 does not give the Development Authority discretion to say that they don't like the appearance of sea cans.

8. With respect to the second reason – that the sea can is located too close to the side lot line – Mr. Romanesky said that his client is willing to move it to provide for the required setback of 0.9 metres. He provided the Board with a revised plot plan showing the new proposed positioning of the sea can.

9. Mr. Romanesky submitted that because accessory buildings are permitted in the RF1 neighbourhood, the Development Officer does not have discretion to refuse it. However, if the Board finds otherwise, it should be noted that there is overwhelming support from the neighbours for this development.

10. In response to Questions from the Board, Mr. Romanesky provided the following clarifying information: The sea can was installed approximately one year ago. The sea can is used for the storage of personal property and is not related to any business activity. The neighbourhood is one where yards are "used heavily."

Position of the Respondent

11. The Board heard from Kendall Heimdahl of Sustainable Development. She made no formal presentation but provided the following information to the Board in answer to questions.

12. The application arose out of a complaint from a neighbor. There were no further details about the address of the neighbor or the timing of the complaint.

13. The Quality Performance Standards set out in Section 57.2 relate to appearance. Sea cans are normally for industrial use and are typically not consistent with a residential neighbourhood. To meet the Quality Performance Standards the exterior finish of the sea can would have to be changed.

Decision:

The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following **CONDITION**:

The Accessory Building (sea can) is to be moved in accordance with the revised Site Plan to allow for a Side Yard Setback of 0.9 metres. Given the time of year, the Board has provided to the Applicant until no later than May 31, 2016 to move the accessory structure as to comply with the revised site plan.

In granting this development, the Board waives the requirements of Section 57.2.

Reasons for Decision:

1. Based on the photographic evidence provided, the Board is satisfied that the sea can is secluded and shielded from view by a fence, foliage and neighboring structures.

2. There were several letters of support from neighbours for this development application. In particular, the most affected neighbours to the immediate north, south and west all provided letters of support.

3. In waiving the Development Authorities determination with respect to Section 57.2 that the accessory structure is more associated with an industrial use the board considered the quality of construction and increased non-combustible characteristics as well as the exterior appearance before waving this requirement.

4. The Board determined that the metal exterior finish of a sea can could look similar to other metal finishes available to clad an accessory structure.

5. The board received no letters of opposition and no one appeared at the hearing in opposition to the development.

6. Based on the foregoing reasons, the board is satisfied that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with the neighbourhood or affect the use, enjoyment or value of the neighbouring parcels of land.

Important Information for the Applicant/Appellant

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   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.

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Mr. V. Laberge, Presiding Officer
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Date: December 18, 2015
Project Number: 173164473-001
File Number: SDAB-D-15-288

Notice of Decision

This appeal dated November 13, 2015, from the decision of the Development Authority for permission to convert a Detached Garage to a Garden Suite (7.31m x 7.31m).

The development permit was refused because of an excess in the maximum allowable Floor Area and a deficiency in the minimum required number of parking spaces.

Further the development was refused as it did not meet the requirement of Section 7.2(4) which states "Garden Suite means a single-storey Accessory Dwelling, which is located in a building separate from the principal Use which is Single Detached Housing. A Garden Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal Dwelling located on the Site. This Use Class does not include Secondary Suites or Garage Suites".

The subject site is located on Plan 290AB Blk 21 Lot 12, located at 12713 - 124 Street NW. The subject Site is zoned RF2 Low Density Infill Zone and is within the Mature Neighbourhood Overlay.

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 3, 2015.

Summary of Hearing:

1. 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.

2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:

    - Written submissions from the Development Authority
    - A letter dated November 12, 2015 from an individual indicating an interest in renting the basement suite at the subject address and noting that they do not own a vehicle

- An email dated November 13, 2015 from a tenant at the subject address indicating that they are the only tenant at the subject address with a vehicle
- A summary of a community consultation conducted by the Appellant, indicating the support of seven neighbours

Position of the Appellant

3. The Board heard from Orron Boire, the Appellant.

4. Mr. Boire said that he has owned the subject property since 2004. It is a duplex and is recognized as such by the City.

5. Mr. Boire rents to friends and family. He has provided affordable accommodation which has helped people with lower incomes. Should this development be approved, he intends to apply for the "Cornerstone Project" to further help providing accommodation for low income people.

6. With respect to the first reason for refusal – the excess of maximum floor area – the existing structure is what it is and there is nothing that can be done about that.

7. With respect to the second reason for refusal – the parking deficiency – the problem is alleviated by the fact that most residents at the subject address do not own vehicles. Furthermore there is a bus stop nearby and there is talk of the LRT extending to the neighbourhood.

8. Mr. Boire reviewed his consultation with neighbours and reported that most of his neighbours are pro development. He spoke with "Jesse" of the local community league and they are also in support.

Position of the Respondent

9. The Board heard from Kendall Heimdahl of Sustainable Development. She made no formal presentation but provided the following information to the Board in answer to questions.

10. The primary building on the subject site was built as a duplex and was granted a development permit as a duplex.

11. The definition of Garden Suites includes a requirement that they be accessory to Single Detached Houses.

12. Assuming the necessary structural changes were made to change the use of the primary building to a Single Detached House, the suite in the basement would have to be decommissioned before a Garden Suite could be approved.

Decision:

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

Reasons for Decision:

1. The definition of Garden Suite is provided by Section 7.2(4) of the *Edmonton Zoning Bylaw* and clearly states that it is an Accessory Dwelling associated with a principal dwelling that is Single Detached Housing. The existing Use of the principal Dwelling is a Duplex. All parties to this appeal confirmed that the Principal Use is a Duplex as defined in the Edmonton Zoning Bylaw.

2. The Board acknowledges that Section 687(3)(b) of the *Municipal Government Act* states that the board is not bound by development regulations. However, in this instance, what the Appellant is asking for is not merely a relaxation of development regulations. In fact, the Appellant is essentially asking the Board to redefine a Use class. The Board reads the relevant legislation as making such a request beyond the Board's jurisdiction to consider.

3. The Board does not have the discretion to amend the list of Permitted and Discretionary Uses available in each zone. If the Board were to change the definition of a Use it would, for all intents and purposes, be doing the same thing.

4. Even if the Board had the authority to allow this development, it would not do so because a "garden suite" would bring the number of dwellings on the property to three. This would increase the density of this development and creates other variances such as a deficiency in parking which the Board believes would have an impact on the neighbourhood.

5. Based on the foregoing reasons, the board is satisfied that the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with the neighbourhood or affect the use, enjoyment or value of the neighbouring parcels of land.

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.

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