



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 1, 2018
Project Number: 265542821-001
File Number: SDAB-D-18-014

Notice of Decision

- [1] On January 25, 2018 and February 14, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 23, 2017**. The appeal concerned the decision of the Development Authority, issued on December 14, 2017, to refuse the following development:

To change the Use from Household Repair Services to Religious Assembly (Minor) and to construct interior alterations.

- [2] The subject property is on Plan 7242AH Blk 1 Lots 15-16, located at 4819 - 118 Avenue NW, within the (CB2) General Business Zone. The Main Streets Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - Legal Counsel for the Appellant’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – E-mail in opposition from J. Chamaschuk
 - Exhibit B – Revised site plan (#1) submitted by the Appellant
 - Exhibit C – Revised site plan (#2) submitted by the Appellant
 - Exhibit D – Revised site plan (#3) submitted by the Appellant
 - Exhibit E – Letter in support for the proposed development from an adjacent property submitted by the Appellant
 - Exhibit F1 – Excerpt from the Abbottsfield/Rundle Heights Community Development Plan submitted by the Appellant
 - Exhibit F2 – Excerpt from the Abbottsfield/Rundle Heights Community Development Plan submitted by the Appellant

Preliminary Matters (January 25, 2018)

[5] The Board made and passed the following motion:

“That SDAB-D-18-014 be TABLED to February 14 or 15, 2018 (after 12:00 p.m.)”

Reasons for Decision

[6] The Appellant has recently retained Legal Counsel who requested a postponement in order to allow additional time to prepare for the hearing.

[7] The Development Authority does not object to the postponement.

[8] On February 14, 2018, the Board made and passed the following motion:

“That SDAB-D-18-014 be raised from the table”

Preliminary Matters (February 14, 2018)

[9] 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.

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

[11] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position Mr. R. Colistro, Legal Counsel for the Appellant, Celestial Church of Christ Gathering of the Saints Parish Edmonton*

[12] Mr. Colistro indicated that discretionary uses are generally acceptable for a particular zone but there could be circumstances that may or may not make it reasonably compatible with surrounding uses and neighbouring properties.

- [13] Mr. Colistro referenced an Alberta Court of Appeal decision, *Chrumka v. Calgary (Development Appeal Board)*, 1981 ABCA 282 and indicated that this decision is one of several decisions that have a reference to the test for discretionary uses. There has to be a good planning rationale to refuse a development.
- [14] The subject building is old and has been vacant for 18 months. It was previously a secondhand store electronics shop. The exterior of the building will not be changing.
- [15] A Google aerial map was referenced to show another Religious Assembly (“Church”) in the area that is within a RF3 Zone.
- [16] The Church has a small congregation of approximately 36 members. Mr. Colistro submitted three revised parking plans, marked *Exhibits B, C, and D*. The *Exhibit B* parking plan with four parking spaces from the rear lane was their preferred choice given the configuration of the building if the Board was to support a revised plan. The congregation cannot increase substantially from its current size of 36 members due to the size of building.
- [17] The Church will have limited hours with events taking place on Sundays from 10:00 a.m. to 2:00 p.m.; Tuesdays and Wednesdays during the evening from 7:00 p.m. to 8:30 p.m.; and choir practice on Saturdays from 6:00 p.m. to 7:00 p.m.
- [18] With the limited operation at the Church during the week, there will not be a constant flow of traffic. The Pastor of the Church will be at the site on a regular basis and the parishioners will be at the site during limited times during the week.
- [19] They received two letters in support of the proposed development prior to the hearing and one letter was provided to the Board at the hearing in support of the proposed development, marked *Exhibit E*. They made an attempt to speak to the residents south of the subject site but they could not reach them. Further, some of the residents were tenants.
- [20] With regard to the letter received in opposition to the proposed development, marked *Exhibit A*, Mr. Colistro stated that there is sufficient on-site parking as it meets the minimum parking requirements of section 54.2, schedule 1(C) and exceeds the minimum parking size dimensions of the *Edmonton Zoning Bylaw*. The rear lane will not be used for parking and there will be no parking in front of the concerned neighbour’s garage or her parking space.
- [21] The property could accommodate a 3.0 metre by 9.0 metre loading space, which would reduce the drive aisle below 7.0 metres for the parking. This could be accommodated but given the use of the site, supplies could be delivered by a passenger vehicle and not a large truck. It would be difficult for large trucks to access the site through the rear lane. They are requesting a variance for the required loading space.

- [22] In his opinion, there is no difference between the use of a Religious Assembly or a Commercial development. A Commercial development would also have customers coming to the site.
- [23] The general purpose of the CB2 Zone was referenced and he stated that the purpose of this Zone is to provide for businesses that require large sites and a location with good visibility and accessibility along, or adjacent to, major public roadways. The size of the site and the building will be an issue for any development that is a Religious Assembly or Commercial development. However, they can benefit from the visibility and accessibility along the roadway and in his opinion, the proposed development is consistent with the general purpose in the CB2 Zone.
- [24] The Main Streets Overlay states its general purpose is to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians. The proposed development does not change the character, visual interest, or anything about the property.
- [25] The Abbottsfield/Rundle Heights Community Development Plan was referenced and Mr. Colistro indicated that this Plan is an initiative that discourages further proliferation of less desirable businesses such as secondhand stores, pawnshops, and used vehicle sales lots. The proposed development will remove an existing secondhand electronics shop use.
- [26] The Abbottsfield/Rundle Heights Community Development Plan objective is to increase resident involvement in addressing crime and safety issues by encouraging interaction between neighbours. The proposed Church encourages community involvement with a potential to create an area for neighbours to interact with each other.
- [27] Mr. Colistro referred to the variances for site coverage and site frontage. The existing building is a non-conforming building and no development would comply with the aforementioned regulations.
- [28] The subject building abuts a Transit Avenue. The *Edmonton Zoning Bylaw* contemplates a rear lane being used to access the parking area as long as it does not interfere with access to other abutting sites and does not direct an excess of traffic onto a residential roadway.
- [29] The City did not provide any evidence from Transportation Services indicating that traffic in the rear lane will have a negative impact on the neighbourhood to the south.
- [30] The subject building is one storey and will not have any other uses operating in the building.

- [31] In their opinion it will be difficult to landscape the front area of the property given the condition of the site and they do not intend to change the look of the property. They would like any landscaping requirements to be waived as it has looked the same for several years. In their opinion, planting trees will obstruct access to the property.
- [32] They are agreeable to the suggested conditions of the Development Officer and are not opposed to placing planters in the front area of the building.
- [33] The front area is not large enough to use for parking. If the proposed development is approved they would like to have all of the parking at the rear of the building.
- [34] They confirmed that 118 Avenue is a Transit Avenue as defined under the *Edmonton Zoning Bylaw*. There are bus stops west on 118 Avenue, north of 118 Avenue on 49 Street, and east of 48 Street. There are approximately three bus stops within a block of the subject site.
- [35] The site coverage and frontage cannot be changed without demolishing the building. The impact of the built form will not change as a result of this change in the use.
- [36] With regard to the RF3 Zone located behind the subject site, Mr. Colistro referred to the Board Agenda that outlines that the rear parking lot consisting of 10 parking spaces is accessed from a lane abutting RF3-zoned properties, which allow Single Detached Dwellings as a permitted use, contrary to Section 71.3(f). However, the subject site proposed four parking spaces with a wide drive aisle. The Development Officer did not indicate that the existence of the rear parking area will have a negative impact on the neighbourhood. In their opinion, parking for any development at the subject site will be at the rear of the building.
- [37] In their opinion, four parking spaces close to a rear lane and the limited hours associated with the use of the development will not increase traffic on residential side streets.
- [38] They confirmed that the Development Officer has not reviewed the revised parking plan (*Exhibit B*). The Development Officer's concerns were not regarding the number of parking spaces but rather access from the rear lane.

ii) Position of the Development Officer, Mr. Welch

- [39] The Development Authority provided written submissions and did not attend the hearing.

Decision

[40] 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. Permanent planters shall be placed the (north) Front yard that are sufficient to prevent vehicular parking in front of the building.
2. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)

NOTES:

1. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Reference Section 17.1).
2. Signs require separate Development Applications.

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

1. The minimum required Frontage of 30.0 metres per section 71.1 is varied to allow a deficiency of 14.76 metres, thereby allowing a Frontage of 15.24 metres.
2. The minimum required Site area of 930 square metres per section 71.1 is varied to allow a deficiency of 372.58 square metres, thereby by allowing a Site area of 557.42 square metres.
3. The maximum allowable Site Coverage of 40 percent (222.97 square metres) per section 71.3(b) is varied to allow an excess of 22.3 percent (146.45 square metres), thereby by allowing a Site Coverage of 66.3 percent (369.42 square metres).
4. Section 71.3(f) is waived to allow parking access from the lane abutting Sites zoned to allow for Single Detached Housing.
5. The minimum required one loading space per section 54.4, schedule 3 is waived.

Reasons for Decision

- [42] The proposed development, a (minor) Religious Assembly, is a Discretionary Use in the (CB2) General Business Zone.
- [43] The Board has accepted a revised parking plan, marked Exhibit B. Under section 54.2, Schedule 1(C)(7) the required number of on-site parking spaces is four and four on-site parking spaces are proposed.
- [44] The Board accepts the Appellant's reasoning that a loading space is not necessary for a congregation of 36 people and where the primary use will be on Sundays with intermittent use during the rest of the week.
- [45] The Board notes that the subject building is a non-conforming building per section 643 of the *Municipal Government Act* and the minimum Frontage, Site Coverage, and Site area requirements cannot be changed. The building itself was approved some time ago and the Applicants are not contemplating any changes to the exterior or the pocket of the building. With the size of this building and the revised parking plan, the parking requirements are satisfied, and additionally, a large on-site drive aisle is being provided.
- [46] This building has been vacant for 18 months and converting it into a community oriented Use on a Transit Avenue will have a positive effect on the neighbourhood.
- [47] The condition on adding permanent planters in the Front Yard was agreed to by the Applicants and it will satisfy the Main Streets Overlay, per section 819.3(8) as it directs all parking to the rear which is from a lane that can be accessed in both directions. Planters will not only prevent parking but will also add landscaping, aesthetics, and color to the front of the building, per section 819.3(13) and 819.3(24).
- [48] Further, the Board notes that there is another Religious Assembly in the area that has parking access from a rear lane.
- [49] With respect to the property owner opposed to the proposed development (letter marked *Exhibit A*), the Board notes that the proposal of only 4 parking spaces with a large drive aisle that will mostly be used on Sundays will address the substance of her concerns.

[50] For all of the above reasons, the Board is of the opinion 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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

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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Date: March 1, 2018
Project Number: 262017320-001
File Number: SDAB-D-18-028

Notice of Decision

- [1] On February 14, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 17, 2018**. The appeal concerned the decision of the Development Authority, issued on January 10, 2018, to refuse the following development:

**Revise the design of (2) existing Freestanding On-premises Signs
(Terra Losa Corner).**

- [2] The subject property is on Plan 9021691 Blk 5 Lot 1, located at 17703 - 98A Avenue NW, within the DC2.133 Site Specific Development Control Provision.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of SDAB-D-99-047;
 - A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions; and
 - A letter from a nearby property that is not opposed to the proposed development.

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.

Summary of Hearing

- i) *Position of Ms. L. Brown, representing Landale Signs, speaking on behalf of the Appellant, Permit Solutions Inc. Ms. L. Brown was accompanied by Mr. W. Brown, representing Colliers International, the Property Manager of the subject Site*

Ms. L. Brown

- [7] Ms. L. Brown read from her written submission.
- [8] She stated that the property has maintained the same zoning since the DC2.133 Bylaw was passed by Council in 1988.
- [9] The subject site was developed under specific conditions, and approved by Council, as it was deemed to require a special and individualized design criterion. The existing signage and the rest of the development are compliant with these criteria.
- [10] When the subject signs were erected in 1999, they were approved by a Development Officer with their current dimensions.
- [11] The refusal by the Development Officer cites only the failure of the signs to comply with the *Edmonton Land Use Bylaw 5996*. This refusal, without any other reasons, indicates that the Development Officer was taking direction only from the General Provisions of the old Bylaw without taking any direction from the site-specific provisions of DC2.133. In her opinion, the Development Officer failed to follow the specific instructions of Council.
- [12] The proposed sign designs maintain the same dimensions, width, and area. The existing signs will be refurbished and repainted which will be a positive improvement to the area.

Mr. W. Brown

- [13] In the competitive market of commercial real estate, it is important for a landlord to ensure their property is well maintained, both structurally and aesthetically, so that landlords can attract and retain tenants.
- [14] The framework of the pylon signs, the support pillars, and the color on the signs, has faded and chipped over time. The property owners are working towards tenant satisfaction and ensuring the signs will last for several more years.

- [15] The signs have been in place for over 20 years with no known complaints.
- [16] In response to questions by the Board, Ms. L. Brown stated that the height of the North sign will be increased by 8 inches to increase the pitch of the sign to enable snow to slide off. This is seen as a safety issue.
- [17] A topper is being added to the South sign but the panels will be lowered which is allowable in that area. The South sign will not be illuminated as it abuts a residential area and the Appellants wish to minimize the impact on the residential neighbours.
- [18] They confirmed that the property owner does not want to add additional signs to the property. They have been working with tenants of the strip mall to ensure they do not display their sandwich board signs on the site every day.
- [19] The tenants are asking the property owner to update the signs on the subject Site. The North sign will be illuminated with LED lights.
- [20] The previous Board approved an application for the sign with a variance of 2.6 feet in height. The 1994 approved sign was for five tenants and the approved sign in 1999 was for eight tenants. The South sign is still below the allowable height.
- [21] There have been no changes to the subject site and no known complaints. The property owner wants to clean up the property. In Ms. L. Brown's opinion, the Development Officer should have used her discretion in that regard as the area is being revitalized.
- [22] The sign area will not be increased. The original top of the North pylon sign was 100 percent illuminated. Only the letters on the new top of the sign will be illuminated which will decrease the sign area. The South pylon sign will not be illuminated.
- [23] In Ms. L. Brown's opinion, viable businesses on the subject site will increase nearby residential property values and adequate signage increases the viability of the businesses on the subject site.
- [24] As part of the proposed refurbishing, the fluorescent bulbs in the existing sign will be replaced with LED lights. These new LED lights will emit less light pollution and are more environmentally friendly.

ii) *Position of the Development Authority, Ms. K. Mercier*

- [25] The Development Authority provided a written submission and did not attend the hearing.

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**:

1. The proposed Freestanding On-premises Signs shall comply in accordance with the approved plans submitted.
2. The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens.

[27] In granting the development the following variances to the *Edmonton Land Use Bylaw 5996* are allowed:

1. The maximum allowable Height of 8 metres, pursuant to Schedule 79D.1(2)(1)(c) is varied to allow an excess of 0.8 metres, thereby increasing the maximum allowable Height to 8.8 metres for the North Sign.
2. The maximum number of businesses identified on a Freestanding Sign is four, pursuant to Section 79.7(12)(c). The proposed North Sign proposes eight businesses and an excess of four businesses is granted. The proposed South Sign proposes five businesses and an excess of one business is granted.
3. The maximum allowable combined Sign Area of 32.2 square metres, pursuant to Section 79.7(8)(d) is varied to allow an excess of 12.3 square metres, thereby increasing the maximum allowable combined Sign Area to 44.5 square metres.

Reasons for Decision

[28] The proposed development, to revise the design of two existing Freestanding On-premises Signs, is Accessory to listed Uses in the DC2.133 Site Specific Development Control Provision.

[29] 685(4)(b) of the *Municipal Government Act* states:

Despite subsections (1), (2) and (3), 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] The Board finds that the Development Authority erred in her decision and did not follow the directions of Council. DC2.133.4.k states:

The Development Officer may grant relaxations to Sections 50 to 79 of the Land Use Bylaw and the provisions of this District, if in his opinion, such a variance would be in keeping with the general purpose of this District and would not affect the amenities, use and enjoyment of neighbouring properties.

The Board finds that the Development Authority had the ability to consider variances from sections 50 to 79 of the *Edmonton Land Use Bylaw 5996*. The Board finds that the proposed design revisions fit in with the General Purpose of the DC2.133 District, which states that the General Purpose is to:

establish a Site Specific Development Control District to accommodate convenience commercial uses and a limited range of general business uses such that by limiting the range of specific land uses and developing sensitive site development criteria the development will be compatible with the Terra Losa Site Design, Landscape and Architectural Guidelines and the Terra Losa Land Use and Development Restrictive Covenant Caveat Schedule, as amended, being part of Bylaw 6616.

- [31] The Board finds that the design revisions accommodate the convenience commercial uses. The existing Signs with the proposed improvements are compatible with the existing strip mall as the Signs have existed since the strip mall was built. The Board finds that that refurbishing the Signs will improve the aesthetics of the subject Site and help promote the businesses.
- [32] Further, the Board finds that the lighting of the North Sign will also be improved as the lighting is changing from fluorescent to LED, which will not only be more environmentally friendly but reduce light intensity. The topper of the South Sign closest to residential properties will not be illuminated.
- [33] With respect to the maximum allowable Height under Schedule 79D.1(2)(1)(c), this variance is allowed due to the fact that both Signs had alterations and a Height variance that was approved by the Board in 1999. The Board finds that a 0.8-metre increase to the pitch is due to a safety issue on the North Sign to allow snow to fall off.
- [34] With respect to the excess in the maximum number of businesses identified on the Signs and the maximum allowable Sign Area, the Board finds that both variations of the North and South Signs were previously approved in 1994 and 1999 and the number of business identification panels and Sign Area will remain the same.

- [35] There have not been any neighbourhood complaints of the existing Signs since they were erected nor did anyone appear in opposition. The only feedback received from a neighbouring property owner indicated that it was not opposed to the development permit.
- [36] For all of the above reasons, the appeal is allowed and the development is approved.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

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