

Edmonton Subdivision and Development Appeal Board

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Date: February 18, 2016
Project Number: 156452383-006
File Number: SDAB-D-16-043

Notice of Decision

[1] On February 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 6, 2016. The appeal concerned the decision of the Development Authority, issued on November 2, 2015, to refuse the following development:

To construct exterior alterations to an existing Single Detached House (a Driveway extension, 1.80 m by 5.59 m and 0.80 m by 5.59 m), existing without permits.

[2] The subject property is on Plan 1323387 Blk 2 Lot 18, located at 16715 – 61 Street NW, within the RSL Residential Small Lot Zone. The McConachie Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan apply to subject property.

[3] The following documents were received prior to the hearing:

- Residential Development and Building Application;
- Refused Application;
- Refused development permit;
- Canada Post Registered Mail delivery confirmation received by “Parshotam Dhaliwal” on November 9, 2015;
- Canada Post Registered Mail delivery confirmation received by “1744891 alberta ltd parshotam” on December 4, 2015;
- Letter from Sustainable Development, dated September 24, 2015, regarding Stadium Residential Parking Renewal;
- Real Property Report; and
- Development Officer’s written submissions.

Preliminary Matter

[4] The Board had to determine whether the Notice of Appeal was filed within the time allowed under Section 686 of the *Municipal Government Act*.

[5] The Development Authority issued a decision refusing the Appellant’s proposed development on November 2, 2015.

- [6] The Development Authority issued two Notices of Decision with respect to that decision, one received on November 9, 2015, and another received on December 4, 2015.
- [7] The first Notice was issued to, and accepted by, “Parshotam Dhaliwal”. The Appellant does not know Parshotam Dhaliwal. The Development Officer was unable to explain the discrepancy and suggested the possibility of a clerical error.
- [8] The second Notice was issued to, and accepted by, “1744891 alberta ltd parshotam”. The Appellant’s wife received and signed for the decision. The Notice was sent to the Appellant’s correct address, but not the correct numbered company.
- [9] The Development Officer, Mr. K. Yeung, advised the Board that he sent out a second Notice of Decision because the Appellant advised him he had not received the decision. Mr. Yeung confirmed the correct address with the Appellant, but could not change the application information on the development permit, which is, perhaps, why the numbered company indicated on the development permit is incorrect.
- [10] Prior to sending the Appellant the second Notice, Mr. Yeung met with the Appellant and advised him that the development permit had been refused.
- [11] On January 6, 2016, the Appellant received a copy of the decision from a City office and filed his appeal the same day.

Decision

- [12] The Board heard conflicting evidence with respect to communications between the Development Authority, the numbered company on the development permit, and various other individuals involved. Therefore, the Board accepts the Appellant’s evidence that he received written notice of the Development Officer’s decision for the first time on January 6, 2016, and filed the Notice of Appeal on the same day.
- [13] Accordingly, the Board finds that the appeal was filed within the time period required by Section 686 of the *Municipal Government Act* R.S.A 2000, c. M-26.

Summary of Hearing

- [14] 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.
- [15] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) Position of the Appellant, Mr. Y. Singh and Mr. M. Dhaliwahl, his business partner

- [16] The Appellant builders poured a wider Driveway than is allowed under the *Edmonton Zoning Bylaw* because the new homeowners have a Basement Suite and a drywall business for which they require additional parking; they do not want to park on the street.
- [17] The Driveway extends by an additional three feet and leads to the side entrance of the house, which is the entrance to the Basement Suite.
- [18] The Appellant left space for landscaping on the opposite side of the Driveway.

ii) *Position of the Development Officer, Mr. K. Yeung*

- [19] Mr. Yeung confirmed that the *Edmonton Zoning Bylaw* does not define “walkway” and that the overall width of the Driveway is calculated. From there, although not defined or legislated, the Development Authority determines whether the width of the walkway is reasonable. Mr. Yeung advised the Board that, in his opinion, a two foot wide walkway is reasonable in this case.
- [20] He interprets the landscaping provisions within the *Edmonton Zoning Bylaw* as requiring landscaping on both sides of the walkway.

iii) *Rebuttal of the Appellant*

- [21] The Appellant argued that two feet is not wide enough for a walkway. He argued that three or four foot wide walkway is more reasonable because that is the width of City sidewalks.

Decision

- [22] 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 **CONDITION**:

- (1) There shall be no parking on either of the walkway portions adjacent to the Driveway.

Reasons for Decision

The Board finds the following:

- [23] The Driveway is Accessory to a Single Detached House, which is a Permitted Use in the RSL Residential Small Lot Zone.
- [24] In establishing the maximum width of driveways, Section 54.1.4 of the *Edmonton Zoning Bylaw* specifically excludes areas used as walkways.
- [25] The *Edmonton Zoning Bylaw* is silent on the width of walkways.
- [26] The four-foot extension on the South side of the driveway is actually a walkway leading to the front entrance of the Single Detached House.
- [27] The three-foot extension on the north side of the driveway is actually a walkway leading to a side, Basement Suite entrance.
- [28] Having walkways is permitted in the Front Yard of a Single Detached House.
- [29] The two walkways are not considered part of the Driveway. In applying for the extended area to be covered with hard surfacing, the Appellant was directed by City employees to apply for a Driveway extension.
- [30] The Board was not presented with evidence that permits are required for walkways in the *Edmonton Zoning Bylaw*.

- [32] The development permit was also refused because of the landscaping provisions in Section 55.4(2) of the *Edmonton Zoning Bylaw*. The Development Authority indicated that an internal policy states that landscaping should be on both sides of the walkway. However, the Board finds that, in this case, landscaping on one side of the walkway is adequate.
- [33] With the condition that parking is not permitted on either walkway, the Appellant will have adequate parking with two parking spaces on the Driveway.
- [34] The Board finds that no variance is required in the width of the driveway and that the proposed development does 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.

Mr. N. Somerville on behalf of 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 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.

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: February 18, 2016
Project Number: 183651022-001
File Number: SDAB-D-16-044

Notice of Decision

[1] On February 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 11, 2016. The appeal concerned the decision of the Development Authority, issued on December 18, 2015, to approve the following development:

To install 2 Fascia On-premises Signs (Edmonton Southside Primary Care Network).

[2] The subject property is on NE-5-52-24-4, Plan 5711KS, Blk A, located at 3103 – 104 Street NW, within the DC2 Site Specific Development Control Provision.

[3] The following documents were received prior to the hearing:

- Appellant’s photographs of the subject Site;
- Sign Combo Permit Application;
- Approved Development Permit;
- Email correspondence between M. Scheuer and E. Martelluzzi regarding Primary Care Network Signs; and
- Development Officer’s written submissions.

Preliminary Matter

[4] The Board had to determine whether or not the Notice of Appeal was filed within the time allowed under Section 686 of the *Municipal Government Act*.

[5] Ms. Leonhardt received the notice of the decision of the Development Authority dated November 18, 2015, on December 27, 2015, after she returned from holidays.

Decision

[6] The Board determined that the Notice of Appeal was filed on time in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 and accepted jurisdiction of the matter.

Summary of Hearing

[7] 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.

i) Position of the Appellant, Ms. C. Leonhardt

[8] Ms. Leonhardt has lived in her home for eleven years. Recently, the Respondent's erected an illuminated Sign that she can see from her kitchen, living room, and bedroom; it also affects her backyard privacy.

[9] In addition to the nuisance caused by the Sign's brightness, which she described as "ten times brighter than any street light she has seen", she is concerned about its impact on her property value.

[10] One year ago when Ms. Leonhardt received notice of the development permit for the Sign, she was assured by the Development Authority that the light from the Sign would not face her property.

[11] Asked whether the Sign would be less of a nuisance if it were moved closer to Calgary Trail, she agreed that it would.

iv) Position of the Development Officers, Ms. E. Martelluzzi and Ms. S. Buccino

[12] The Development Officers confirmed the location of the two Signs. The first Sign is on the North side of the building and is slightly larger than the Southern Sign. The South Sign, which is not in question in this appeal, faces the parking lot.

[13] Prior to the erection of the Respondent's Signs, the building face held an A & B Sound Sign, which does not appear to have had a development permit. The Development Officers reviewed photographs of the Sign and believed it looked longer and took up only one bay window. There is no reason the proposed Sign cannot be located where the former A & B Sound Sign was located.

[14] Section 2.7 of the *Edmonton Zoning Bylaw* provides that any reference to a Direct Control District is deemed to reference the land use bylaw that was in effect at the time the Direct Control District was created, which, in this case, is Section 79 of the City of Edmonton Land Use Bylaw 5996.

[15] With respect to the variance granted to the requirement that the Sign shall not be higher than the windowsill of the second storey of the building, the Development Officer confirmed that the Sign is 4.1 metres from the bottom of the second storey of the building.

[16] Asked if the Sign was lowered, whether it would have an impact on the neighbourhood, the Development Officer advised that Ms. Leonhardt's property was likely the most affected and that she reviewed an aerial photograph that showed that the first floor of the building does not shine light directly onto the nearby houses.

[17] Asked about whether landscaping might mitigate some of the Sign's impacts, the Development Officer advised the Board that a berm had been put in place as a result of the initial review done by the previous Development Officer, Ms. F. Hamilton. She also

advised that the *Edmonton Zoning Bylaw* does not allow for landscaping as a means of mitigation of the impacts of, in this case, a Sign.

iv) Position of the Respondent, Mr. M. Scheuer, Mr. A. Hystad, and Mr. D. Craig

- [18] Mr. Scheuer has experience with sign lamination and brightness; this is a standard illuminated (not digital) fascia Sign that is no brighter than other Signs around the City.
- [19] Mr. Scheuer presented the Board with a photograph (Exhibit “A”) showing a comparison of the relative brightness of a fascia Sign, high intensity parking lot lights, and a digital Sign. The security lights were the most intensely lit, followed by the digital Sign, with the illuminated Sign being the least bright.
- [20] Mr. Scheuer provided the Board with an example of a lit-up Sign that has the same brightness as the proposed Sign (Exhibit “B”).
- [21] Mr. Scheuer advised the Board that the former A & B Sound Sign was a neon sign that was brighter than the proposed Sign.
- [22] They advised the Board that the location of the Sign could be moved to the East, closer to Calgary Trail.
- [23] Asked why the Sign cannot be placed in the location of the former A & B Sound Sign, the tenant explained that the Sign’s location was chosen by the landlord.
- [24] The business is open until approximately 8:30 pm Monday through Thursday, but the businesses intention is to have the sign illuminated twenty-four hours per day; it is intended to identify the business and attract new customers.

iv) Rebuttal of the Appellant

- [25] Ms. Leonhard reiterated her concern about the Sign’s brightness, Height, and location.
- [26] With respect to the Height issue, her concern is that the building has high ceilings, which means that the second storey starts at fifteen feet.
- [27] With respect to the Sign being relocated approximately twenty feet to the East, although she remains concerned about the Sign’s brightness, she would be happy if it were located further from her property.

Decision

- [28] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following changes:
- (1) The Sign shall be relocated to the recessed portion of the East face of the building as indicated on the attached Site Plan.
- [29] The following variance is granted:
- (1) A variance of 4.1 metres in Height for the proposed Sign.

Reasons for Decision**The Board finds the following:**

- [30] While the application is for two fascia signs, it is the sign on the north side that is being appealed because it, alone, is visible from residential properties.
- [31] The Development Authority is correct in applying Section 2.7 rather than Section 2.4 of the *Edmonton Zoning Bylaw* to the proposed development because the relevant Site Specific Development Control Provision contains several express cross-references, specifically DC2.11.1 and DC2.11.4(h)(v), to the handling of signs on the subject property.
- [32] By approving the originally requested position of the fascia sign on the North side of the building, the development authority did not comply with the General Purpose of DC2.11, which is “*to ensure minimum negative visual ... impacts on adjacent residential properties.*”
- [33] Accordingly, pursuant to Section 641(4) of the *Municipal Government Act*, the Board may substitute its decision for that of the Development Authority.
- [34] The variance granted to Section 79.7.7(a) of the Land Use Bylaw 5996, regarding the Height of Signs, is reasonable and well within the variance powers granted in that bylaw.
- [35] The re-positioning of the sign places it well outside the separation distance required in DC2.11.4(h)(v).
- [36] Based on the relocation of the Fascia Sign further away from the residential properties and its placement on a recessed wall, the Board is satisfied that the development will mitigate the appellant’s concern and will not unduly interfere with the amenities of the Steinhauer neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville on behalf of Ms. P. Jones,
Presiding Officer
Subdivision and Development Appeal Board

Enclosure

Important Information for the Applicant/Appellant

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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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