



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 17, 2017
Project Number: 182968437-001
File Number: SDAB-D-17-030

Notice of Decision

- [1] On February 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 17, 2017**. The appeal concerned the decision of the Development Authority, issued on January 4, 2017, to refuse the following development:

To construct one (1) Freestanding Off-premises Sign (existing without permits)

- [2] The subject property is on Plan RN50 Blk 117 Lots 27-28, located at 11714 - 82 Street NW, within the CB2 General Business Zone. The Alberta Avenue Pedestrian Commercial Shopping Street Overlay and Parkdale Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - Consultation documents from both parties, containing one letter of support and one in opposition.

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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Mr. M. Levine:*

- [7] The subject site is a triangle-shaped lot that abuts 82 Street and Fort Road.
- [8] Photographs in his materials illustrate the north and south face of the existing sign that was built in 1993.
- [9] The proposed sign is 8 metres high and exceeds the maximum allowable Height of 6 metres by 2 metres.
- [10] In his opinion, the sign at this Height does 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.
- [11] Freestanding Off-premises Signs are a Discretionary Use in the CB2 General Business Zone.
- [12] This sign can be approved at its existing location because this commercial area does not require a setback between the sidewalk and the building.
- [13] The sign is in keeping with the commercial nature of the area.
- [14] The nearest residence is 60 metres away from the sign and the sign cannot even be seen from that residence. The Height restriction of 6 metres will result in the removal of one advertising face and less income for the landowner.
- [15] Removal and construction of a new sign will cost approximately \$10,000.00.
- [16] The catwalk portion of the existing sign encroaches onto the City right-of-way. He assumed that the diagonal shape of the Site was not considered when the sign was installed. However, a Development Permit must be approved before the City can grant an Encroachment Agreement.
- [17] He acknowledged the objection of the Community League, regarding the impact of the existing sign on the visual appeal and walkability of the neighbourhood – but questioned their concern about how a sign 6 metres in Height versus one 8 metres in Height could affect visual appeal and walkability. He noted that the sign has existed for many years without any known complaints.
- [18] He personally conducted the community consultation on two separate days in December 2016. Speaking with landowners was awkward due to the cold weather and the time of the year. All residents received feedback forms. Two attempts were made to contact commercial landowners in the area.

- [19] The purpose of the Alberta Avenue Pedestrian Commercial Shopping Street Overlay is to facilitate development of a pedestrian-oriented character to commercial and mixed Use developments along 118 Avenue, between 76 Street and 105 Street, in close proximity to residential areas, in accordance with the Avenue Initiative Revitalization Strategy and Plans in effect for this area of the City.
- [20] The Sign is located on 82 Street, not 118 Avenue. 82 Street is a major arterial roadway that connects downtown Edmonton with the north end of the City. Approximately 20,000 vehicles use 82 Street on a daily basis.
- [21] The Overlay itself does not facilitate pedestrian friendliness as it still includes parking requirements that prevent pedestrian-friendly businesses such as neighbourhood cafes to service nearby residents from moving in.
- [22] Mr. Levin provided the following responses to questions:
- a) The photographs contained in his written submission were taken from Google.
 - b) He personally became aware that the sign existed without a Development Permit in March, 2016.
 - c) Initiatives have been undertaken to obtain Development Permits for all of the expired signs since Outfront Media took over the previous sign company in 2014.
 - d) The last valid Development Permit for this sign was issued in 2001.
 - e) This Development Permit application was commenced in November, 2015.
 - f) He believes that the sign could possibly be rotated to ensure that it did not encroach onto City property but he would have to consult with an Engineer.
 - g) It is difficult to determine how distracting the sign is to pedestrians.
 - h) The sign is intended for motorists travelling on 82 Street.
 - i) This site is located at the most southerly boundary of the Overlay.
 - j) The visibility of the sign is limited for pedestrians walking south on 82 Street.
 - k) There is an unmarked crosswalk located at the intersection of 82 Street and Fort Road, but at that point is no longer visible to passing motorists and is not a distraction.
 - l) Residential properties are located to the south across an existing green space towards 117 Avenue.
 - m) The 60 metres notification map provided by the Development Officer was used to conduct the community consultation. Some were assessed owners and some were renters. The City does not provide contact information for the land owners.
 - n) He referenced the consultation log to review the addresses that were contacted.
 - o) Businesses are located north of the subject Site.
 - p) There are residences closer than 60 metres located to the northwest across the lane; he canvassed those properties and spoke to some land owners.
 - q) He confirmed that he did not speak to anyone at 11646 – 82 Street, but an information package was left in the mailbox.
 - r) The sign is located in the northeast corner of the Site which also contains an L-shaped commercial building and a parking lot.

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

- [23] An application to construct an Off-premises Freestanding two sided Sign, facing north/south) was cancelled in 2001.
- [24] A Violation Notice was issued on November 30, 2015 for a sign existing without a Development Permit. A Development Permit Application was cancelled at the request of the Applicant because the requested information was not provided. He did not cancel the November 18, 2015 application as cancelling had no impact on the prior occasion.
- [25] Section 340.4(3) of the *Edmonton Zoning Bylaw* was amended in June 2011 to allow no setback where adjacent commercial buildings abut the property line to form a pedestrian-oriented shopping street.
- [26] The proposed sign exceeds the maximum allowable Height of 6.0 metres.
- [27] The Development Authority cannot grant a variance to Height, pursuant to section 11.3 of the *Edmonton Zoning Bylaw*.
- [28] Section 22(2) of the Bylaw states that once a Development Permit has been issued, it remains in effect until it expires, in cases where the Development Permit was issued for a limited period of time. The existing sign expired in August 2001 and the sign has not had a valid permit for 15 years.
- [29] The Alberta Avenue Pedestrian Commercial Shopping Street Overlay came into effect in September 2007.
- [30] The current *Edmonton Zoning Bylaw* and the Overlays in effect apply to this new Development Permit application. Section 821.3(23)(a) states that the maximum allowable Height of a Freestanding Sign shall be 6.0 metres.
- [31] Mr. Ahuja provided the following responses to questions:
- a) Only digital sign applications are circulated to Transportation Services. This application was not circulated as the development is a static sign.
 - b) He acknowledged that the fact that the existing sign encroaches into a City right-of-way which could have been included as a reason for refusal.
 - c) The sign is located within the property lines, only the catwalk encroaches onto the right-of-way.
 - d) The requirement for an Encroachment Agreement was included as an “Advisement” because an application can only be made once the Development Permit has been approved.
 - e) Conditions requiring an Encroachment Agreement can be imposed on a Development Permit approval.

- f) The Applicant was provided with a standard form and a list of the property addresses located within a 60 metre radius of the subject site to complete the required community consultation.
- g) Sustainable Development also sent letters to the assessed land owners within the 60 metres radius. The letter provided notice of the development and advised that a consultation should be coming. The letter specified that the sign has existed without a permit and explained that a 2.0 metres variance was required in the maximum allowable Height.
- h) Land owners names cannot be provided for privacy reasons.
- i) He did not receive any responses to the letters that were sent by his department.
- j) He had to refuse the application because of the Height variance required.
- k) The Use has existed for more than 15 years and the impact to the area will not change.
- l) It was his assumption that the maximum allowable Height restriction was changed to ensure that the lights from a sign would not shine onto neighbouring properties and would be less intrusive.

iii) Rebuttal of the Appellant:

[32] Mr. Levin had nothing further to add in rebuttal.

Decision

[33] 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. This Freestanding Off-premises Sign is approved until February 17, 2022;
2. The proposed Freestanding Off-premises Sign shall comply with the approved plans submitted;
3. The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens, pursuant to Section 59.2(4) of the *Edmonton Zoning Bylaw*;
4. The proposed Freestanding Off-premises Sign encroaches on a City Right-Of-Way. Please contact City of Edmonton at sdencroachmentagreements@edmonton.ca to apply for an Encroachment Agreement.

Reasons for Decision

[34] A Freestanding Off-premises Sign is a Discretionary Use in the CB2 General Business Zone.

[35] The proposed Sign requires a variance to the maximum allowable Height under Section 821.3(23)(a) of the Alberta Avenue Pedestrian Commercial Shopping Street Overlay (the Overlay).

[36] When a variance is required to development regulations within the Overlay, the Applicant must perform community consultation per Section 821.3(25). The Applicant must contact the affected parties, being each assessed owner of land wholly or partly

located within a distance of 60 metres of the Site of the proposed development and the President of each affected Community League and the President of each Business Revitalization Zone Association, at least 21 days prior to submission of a Development Application.

- [37] In this case, the initial application date was November 24, 2015 and the application languished for over a year before it was again actively pursued by the Appellant in late 2016. The Appellant made two attempts to survey property addresses provided on the list received from the Development Authority on December 13 and 15, 2016. Telephone calls were made to some property owners on December 14, 2016.
- [38] While this community consultation does not comply with the technical timelines outlined in Section 821.3(25) of the Overlay, the Board finds that there has been substantial compliance with the requirement for community consultation for the following reasons:
- a) In canvassing the neighbours and preparing a consultation log, the Appellant has met the intent of community consultation which is to solicit the views of the most affected parties regarding the proposed development in advance of the decision of the Development Authority.
 - b) The Appellant attempted to contact these individuals on two occasions and left letters at each address explaining the scope of the application was for the existing Sign which required a 2.0 metre Height variance.
 - c) The Appellant also contacted the Community League in advance of the decision of the Development Authority.
 - d) The Board notes that the Development Authority also sent letters to each of the assessed owners of land within a 60 metres radius advising them that consultation would be forthcoming for the existing Freestanding Off-premises Sign and that it exceeded the maximum allowable Height restriction of 6.0 metres by 2.0 metres.
- [39] Based on the evidence provided to the Board, the double-sided Freestanding Off-premises Sign has existed at this location, since 1993, without any known complaint.
- [40] None of the assessed owners or residents within the 60 metres radius, who are the most affected parties, raised any objection to the continuance of the Sign at this location at the existing Height of 8.0 metres.
- [41] The Board received one letter in opposition to the development from the Parkdale Cromdale Community League. The League acknowledged that they have not heard any direct complaints about the Sign, but felt that they should oppose the variance to embrace the City's future desire for the area to increase the visual appeal and walkability of the neighbourhood.
- [42] The subject Site fronts onto a major arterial roadway (an offshoot of 82 Street that connects to Fort Road). Commercial properties are located north and east of the subject Site.

- [43] The Board finds that impacts due to the variance in Height are partially mitigated for the residential properties located northwest of the subject Site across the Lane because of existing mature vegetation and the Height of commercial developments located north and west of the Sign. Also a commercial, three-storey building immediately across 82 Street separates the Sign from the residential area further to the east.
- [44] The Board did not receive any evidence that the Height of the Sign created a traffic concern or interfered with pedestrian use of the marked crosswalk adjacent to the Site, although it is noted that the Development Authority did not consult with Transportation Services regarding the proposed development.
- [45] Condition 4 has been imposed at the request of the Development Officer. The Appellant did not object to this condition. Condition 4 requires the Appellant to apply for an Encroachment Agreement.
- [46] The Board notes that this decision in no way authorizes the encroachment of any portion of the Freestanding Off-premises Sign onto the City of Edmonton right-of-way. Permission for this encroachment or the terms of any Encroachment Agreement are entirely private matters between the City of Edmonton and the Applicant and beyond the authority of this Board.
- [47] For the reasons above, the Board finds that the proposed development is reasonably compatible with its surroundings and that the required variance in Height 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. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. K. Hample, Ms. M. McCallum, Ms. E. Solez

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*, 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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

ADVISEMENTS:

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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SDAB-D-17-031

Project No. 221482518-001

An appeal to relocate one (1) Freestanding Minor Digital Off-premises Sign (6.1 metres by 3.0 metres) was **TABLED** to March 8, 2017.