



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: February 2, 2017  
Project Number: 221499491-001  
File Number: SDAB-D-17-014

**Notice of Decision**

- [1] On January 18, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on December 19, 2016. The appeal concerned the decision of the Development Authority, issued on December 2, 2016 to refuse the following development:

Install (1) Freestanding Off-premises Sign (2 sided - 6.1 m x 3 m -existing without permits)

- [2] The subject property is on Plan RN76 Blk 2 Lot 14, located at 8306 - 118 Avenue NW, within the CB2 General Business Zone. The Alberta Avenue Pedestrian Commercial Shopping Street Overlay and Alberta Avenue/Eastwood 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 and plans;
- Refused Development Permit decision;
- Canada Post receipt confirming delivery of the refusal decision;
- Development Officer's written submissions, dated January 3, 2016;
- The Appellant's PowerPoint presentation and supporting materials, including community consultation information; and
- One online response in opposition to the 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 the Appellant, Outfront Media*

- [7] The Appellant was represented by Mr. M. Levine.
- [8] Mr. Levine provided an overview of the existing sign development, which has been existing at its current location along 118 Avenue and 83 Street since 1993. The sign is two-sided, and is intended to attract east-west vehicular traffic along 118 Avenue. The east-facing façade is partially obscured by trees. In the future, the Appellant intends to illuminate the paper sign using a lightbulb. It will not be a digital sign.
- [9] Mr. Levine explained that the Alberta Avenue Pedestrian Commercial Shopping Street Overlay (the “Overlay”) allows only a maximum height of six metres for signs. The proposed development is therefore approximately two metres over-height.
- [10] The Appellant submitted that the height variance should be granted because the sign is in character with the businesses in the area. Should the sign be reduced to six metres, there will be financial costs to the Appellant for the removal of the existing sign, and the construction of a new one.
- [11] Referencing the one online response submitted by a neighbouring property owner in opposition to the development, Mr. Levine noted that the wording of the neighbour’s comment suggests that the sign is over-sized and that it does not currently exist. Mr. Levine disagreed: not only does the sign currently exist, it is actually fairly typical at approximately 10 feet x 20 feet. He submitted that the neighbour did not fully understand the nature of the development permit application that is the subject of this appeal.
- [12] Upon questioning by the Board, Mr. Levine clarified that the development did have a valid permit from 1993 to 1997, and from 2007 to 2012. He was unsure why his predecessor did not apply for a new sign permit.

### *ii) Position of the Development Authority*

- [13] The Development Authority was represented by Mr. S. Ahuja.
- [14] Mr. Ahuja clarified that no variances were required for the previous approved sign permits. However, in this case, the Overlay does not permit signs over six metres, so a variance is needed. Upon questioning by the Board, he stated that if he had the authority to vary height, he probably would have granted the variance in this case, citing the fact that the sign has existed for a number of years, and that its east-facing façade is partially obscured by trees.

[15] Upon further questioning, Mr. Ahuja stated that although he is not an urban designer, it was his understanding that the Overlay was intended simply to keep all signs at six metres in height, rather than eliminating all signs within the Overlay.

### **Decision**

[16] 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 subject Freestanding Off-premises Sign permit is approved for a period of up to five years, to expire on **February 2, 2022**.
- 2) The proposed Freestanding Off-premises Sign shall be in accordance with the approved plans submitted.
- 3) The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens. (Reference Section 59.2(4))

[17] In granting the development, the following **VARIANCE** to the *Edmonton Zoning Bylaw* is allowed:

- 1) Section 821.3(23)(a) is relaxed to permit a deficiency of 1.92 metres, for a total Sign Height of 7.92 metres instead of 6.0 metres.

### **Reasons for Decision**

[18] Freestanding Off-premises Signs are a Discretionary Use in the CB2 General Business Zone. The subject development is located at 8306 – 118 Avenue NW, and the Alberta Avenue Pedestrian Commercial Shopping Street Overlay (the “Overlay”) applies to the development. Under section 821.3(23)(a) of the Overlay, “the maximum Height of a Freestanding Sign shall be 6.0 m.” The sign face of the proposed development is 6.1 metres x 3.0 metres, with an overall height of 7.92 metres. It therefore requires a variance of 1.92 metres.

[19] Under section 687(3)(d) of the *Municipal Government Act*, the Board:

may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) The proposed development would not

(A) unduly interfere with the amenities of the neighbourhood,  
or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land

[20] Even though the proposed sign does not comply with the height requirements under the *Edmonton Zoning Bylaw*, the Board exercises its authority under section 687(3)(d) to grant the required height variance for the following reasons:

- a) With the exception of the Height requirement under section 821.3(23)(a), the proposed Sign complies with all other development regulations.
- b) The Board reviewed the visual impact of the subject Sign by focusing on the 1.9 metre Height variance. The Board notes that signs of 6.0 metres in Height or lower are allowed at this location.
- c) Photographs presented before the Board demonstrated that the east face of the proposed Sign is somewhat concealed by the buildings and landscaping that is located east of the subject Sign on 118 Avenue. Notwithstanding the Overlay, the Board has made a determination that 118 Avenue is an arterial roadway and a major transit route, and the Sign is located appropriately to attract the attention of vehicular traffic on this road.
- d) When it was constructed in 1993 and subsequently permitted in 2007, the sign fully complied with the requirements of the *Edmonton Zoning Bylaw* as it existed at those times. The non-compliance arose with Bylaw 17422 that came into effect on December 1, 2015. But for the lapsing of the 2007 permit, the sign would be a legal non-conforming Use that could continue to be used.
- e) Other than one online comment submitted by a neighbouring property owner in opposition to this development application, the Board received no other feedback. Of note, no representatives from the community league or the Alberta Avenue and Area Business Revitalization Zone appeared in opposition. In fact, the Board notes that acceptable community consultation was conducted, and there is generally broad support for the proposed Sign.

[21] For the above reasons, the Board finds that granting the required 1.92 metre Height variance 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. The appeal is allowed.

Mr. V. Laberge, 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 5<sup>th</sup> 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.

*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 2, 2017  
Project Number: 000413016-003/004  
File Number: SDAB-D-16-294/295

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on September 29, 2016, made and passed the following motion:

That the appeal hearing be scheduled for November 17, 2016.

- [2] On November 17, 2016, the Board made and passed the following motion:

That the hearing for SDAB-D-16-294 and SDAB-D-16-295 be tabled to January 18 or 19, 2017, at the written request of Legal Counsel for the Appellant and with the agreement of all parties involved.

- [3] On January 18, 2017, the Board made and passed the following motion:

That SDAB-D-16-294 and SDAB-D-16-295 be raised from the table.

- [4] On January 18, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on September 20, 2016. The appeal concerned the decision of the Development Authority to issue two Stop Orders on September 8, 2016. Both Stop Orders required the following:

CEASE the Non-Accessory Parking, REMOVE all meters, signage, and material related to parking and REFRAIN from allowing Non-Accessory Parking. This Order is to be complied with on or before September 28, 2016.

- [5] With respect to Stop Order 000413016-003, the subject property is on Plan B2 Blk 5 Lot 133, located at 10123 - 106 Street NW. With respect to Stop Order 000413016-004, the subject property is on Plan B2 Blk 5 Lots 134-137. Both properties are within the UW Urban Warehouse Zone. The Capital City Downtown Plan and Special Area Downtown apply to the subject property.

- [6] The following documents were received prior to the hearing and form part of the record:

- Copy of the original development applications;
- Copy of the Stop Orders 000413016-003 and 000413016-004;
- Appellant's postponement requests;
- Joint submissions of the Appellant and Respondent, with supporting materials;
- Refused Development Permit decision; and
- One letter from the Downtown Edmonton Community League, in opposition to the development.

### **Preliminary Matters**

- [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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [10] The Presiding Officer acknowledged the joint submissions of both the Appellant and the Respondent City of Edmonton (Development Authority), requesting an extension of the enforcement period from September 28, 2016 to March 15, 2017. The Presiding Officer invited the parties to speak to this matter, particularly as to how it might impact Board processes and appeal rights.
- i) *Joint Submissions of the Appellant, Wigalo Holding Ltd., and the Respondent, City of Edmonton (Development Authority)*
- [11] The Appellant was represented by legal counsel, Ms. J. Agrios. The Respondent was represented by legal counsel, Mr. M. Gunther. Mr. J. Hogberg and Mr. G. McGovern from the City of Edmonton Sustainable Development Department were also in attendance.
- [12] Ms. Agrios explained that initially, the matter before this Board was to be an appeal of two Stop Orders. The Board subsequently granted two adjournment requests while the Appellant underwent the development permit application process. The City has since declined to agree to a third adjournment request; however, it is amenable to a variance to the issued Stop Orders, effectively requiring that the Appellant either obtain an approved permit by March 15, 2017, or else enforcement action pursuant to the Stop Order shall proceed.
- [13] As a result, both parties now appear before the Board and jointly request that the Board vary the enforcement dates of both Stop Orders from September 28, 2016 to March 15,

2017. Should the Board grant the request, then the Board would effectively be upholding the Stop Order decision, save for the variance to the enforcement date. As the Board's decision is final, the Appellant would have no further right of appeal to this Board with respect to the Stop Orders.
- [14] Regarding the development permit application that is currently underway for the non-Accessory Parking lots, Ms. Agrios explained that should the Development Officer approve the permit, notices would still be mailed to property owners within the 60 metre notification area, at which time, those owners may file an appeal of the development permit approval.
- [15] On the other hand, should the development permit be refused, the Appellant would still have the right to appeal the refusal decision to this Board. However, should the Board at that time uphold the refusal decision, then the Stop Orders would already be in place and the City could then proceed immediately with enforcement action.
- [16] In either scenario, this panel of the Board would not be seized of the matter, as this panel is making a decision only on the Stop Order appeals, and not the merits of the development permit application itself.
- [17] In addition, Mr. Gunther submitted that contrary to being seized, it would be more likely that this panel of the Board would be disqualified from hearing the appeal of the development permit decision, as it has now heard information regarding the subject property. Upon further questioning by the Board on this issue, both Ms. Agrios and Mr. Gunther acknowledged that this hearing has not delved deeply into the merits of the development permit application itself. It would therefore be unlikely that an issue would be raised with respect to this panel's ability to provide a fair hearing should the impending development permit decision be appealed to this Board.
- [18] Upon further questioning, Ms. Agrios clarified that if the Appellant is unable to obtain an approved permit by March 15, 2017, then Bylaw enforcement could move forward with enforcing the Stop Orders. That being said, there is flexibility with respect to the City's method of enforcement. More than likely, as the enforcement date approaches and if the Appellant still has not obtained an approved permit, more discussion would occur between the two parties regarding enforcement. Mr. Gunther concurred.
- [19] In sum, Ms. Agrios submitted that the Board's authority to vary an order is set out in section 687(3)(c) of the *Municipal Government Act*. Accordingly, both the Appellant and the Respondent request that the Board exercise its authority under section 687(3)(c) and vary the enforcement date of the two Stop Orders from September 28, 2016 to March 15, 2017.



**Decision**

- [20] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED** as follows:

Stop Order 000413016-003 as issued by the Development Authority is **UPHELD** subject to the following changes:

CEASE the Non-Accessory Parking, REMOVE all meters, signage, and material related to parking and REFRAIN from allowing Non-Accessory Parking. This Order is to be complied with on or before **March 15, 2017**.  
[emphasis added]

Stop Order 000413016-004 as issued by the Development Authority is **UPHELD** subject to the following changes:

CEASE the Non-Accessory Parking, REMOVE all meters, signage, and material related to parking and REFRAIN from allowing Non-Accessory Parking. This Order is to be complied with on or before **March 15, 2017**.  
[emphasis added]

**Reasons for Decision**

- [21] The matter before this Board concerns the joint submissions of the Appellant and Respondent to vary Stop Orders 000413016-003 and 000413016-004 to change the enforcement date from September 28, 2016 to March 15, 2017.
- [22] The Board heard no submissions with respect to the validity of the Stop Orders, and in the absence of the contrary, finds that the Stop Orders were issued validly. The Board therefore confines its decision to the joint submissions of the parties.
- [23] Section 687(3)(c) of the *Municipal Government Act* states, in part: “the subdivision and development appeal board may confirm, revoke or vary the order... or make or substitute an order... of its own.” In this regard, the Board heard that varying the Order to extend the enforcement date to March 15, 2017 would constitute a final decision of this Board, which the Appellant would be unable to appeal again to this Board. The Board also heard that there have been extensive efforts between the two parties to move forward with the development application process. Therefore, setting a firm compliance date of March 15, 2017 would provide certainty for the Respondent with respect to enforcement, while ensuring that the Applicant continues its efforts to secure a permit. The Board therefore finds that varying the enforcement date would not be prejudicial to either party.
- [24] In addition, the Board notes that the proposed development has existed in excess of 20 years prior to these Stop Orders. However, all parties agreed that the previous permit had expired and that the new development application, not before this Board, deals with

changes to the Bylaw since the development was last approved. It would therefore be appropriate for the development to undergo a proper review, based on the current development regulations. The Board notes this fact only to determine whether any prejudice would be created by extending the compliance date in the Stop Orders. The Board finds by extending the compliance date in the Stop Orders that there has been no prejudice created to any party.

[25] For the above reasons, the Board accepts the joint submissions of the parties. The Stop Orders are accordingly varied.

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

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