



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 16, 2019
Project Number: 305134980-001
File Number: SDAB-D-19-102

Notice of Decision

May 29, 2019 Hearing:

Motion:

“That the appeal hearing be scheduled for July 3, 2019 at the written request of the Respondent and with the consent of the Appellant”

July 3, 2019 Hearing:

Motion:

“That SDAB-D-19-102 be raised from the table”

[1] On July 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 21, 2019. The appeal concerned the decision of the Development Authority, issued on April 18, 2019, to approve the following development:

Erect Privacy Screening at 3.05 metres in Height in the Rear Yard and Side Yard of a Single Detached House

[2] The subject property is on Plan 1125822 Blk 3 Lot 34, located at 3416 - Watson Place SW, within the RSL Residential Small Lot Zone. The Windermere Area Structure Plan and Windermere Neighbourhood Structure 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 approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Several emails in support of the appeal.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Photographs from the Respondent
- Exhibit B – Online response from 3418 Watson Place

Preliminary Matters

[5] 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.

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

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellants, Mr. and Mrs. Rizzo:

[8] They are opposed to the issuance of a development permit to erect a privacy screen at 3416 Watson Place SW.

[9] It was their opinion that the structure referred to as a privacy screen by the Development Officer is in reality a “fence” and/or wall. As illustrated in the photographs that have been submitted, the tall brown fence was built without a development permit adjacent to the existing grey standard fence in this subdivision.

[10] It was their understanding that a privacy screen would include trees and other vegetation which would be aesthetically pleasing opposed to a tall brown fence that is an eyesore.

[11] All four of the most affected adjacent property owners have provided written opposition including photographs to the issuance of the development permit.

[12] The photographs also illustrate the wrought iron fence that has been installed along the public walkway.

[13] Architectural guidelines have been established to ensure that the neighbourhood has a uniform and consistent appearance. The fence on the subject property is three different colours, grey, brown and black which does not conform to the guidelines and is not consistent with the neighbourhood. The guidelines require grey wooden fencing at a determined height and wrought iron fencing along the public walkway.

- [14] The difficult economy over the past four years has resulted in a decrease in property values in the City of Edmonton. This fence that is out of place and not typical of the neighbourhood will further negatively affect their property value in this upscale neighbourhood.
- [15] The visual impact from their rear yard unduly affects the use and enjoyment of their property. All of their guests and even neighbours walking along the public walkway have commented on the eyesore that the structure creates.
- [16] They questioned why the Respondent would have purchased a lot with such a large section of the rear yard backing onto a public walkway if they wanted to preserve their privacy. If additional privacy was required, they could have added additional vegetation and trees instead of erecting an ugly brown wooden fence.
- [17] It was noted in the Development Officer's report that letters of support were submitted by the Applicant. However, they questioned which neighbours would have provided support because all of the neighbours who can see the structure have provided written opposition to the proposed development.
- [18] Mr. and Mrs. Rizzo provided the following information in response to questions from the Board:
- a) It was acknowledged that the architectural guidelines are imposed by the developer of the subdivision and are outside the purview of the Board.
 - b) The constant view of the existing structure does not allow them to enjoy the amenity space in their rear yard. All of their guests can see the structure when they come to their house and have commented that it is an eyesore.
 - c) The fence along the public walkway is the standard wrought iron fence required in the architectural guidelines except for the portion of the walkway that runs the length of the subject site.
 - d) The structure is too high and is not complimentary to the existing fences.
 - e) Information could not be provided as to when the structure was built but it existed when they moved into their house in September 2018.
 - f) It was acknowledged that the definition of a Privacy Screen contained in the *Edmonton Zoning Bylaw* allows a variety of building materials, not just trees and shrubs.

*ii) Position of Affected Property Owners in Support of the Appellant:*Mr. Zhang & Ms. Chen:

- [19] Photographs to illustrate the construction time line of this development were referenced, specifically from October 22, 2016 to May 8, 2019.
- [20] The rear of their house faces directly onto the structure and abuts the public walkway. They have often overheard people comment negatively about the structure while walking along the walkway.
- [21] He questioned how this development was approved because the completed “double” fence appears to be 3.5 metres high and has an inconsistent style and three different colours.
- [22] Their lot is lower than the subject lot which makes the structure appear even higher.
- [23] The measurements that he took are different than the measurements provided by the Development Officer.
- [24] It is very painful and a psychological burden to have to look at a very strange, tall wall in their back yard every day.
- [25] Mr. Zhang and Ms. Chen provided the following information in response to questions from the Board:
- a) The largest part of the extended fence abuts their property.
 - b) The structure blocks morning sunlight onto their property which impacts their ability to have a garden in the rear yard.
 - c) A photograph was referenced to illustrate the measurements that were taken. The height of the brown fence above the existing fence is 1.44 metres and the height of both fences together is 3.47 metres.
 - d) The architectural guidelines and controls placed on this subdivision influenced their decision to purchase a house in this area. They would not have purchased their lot if this structure had existed at that time.

iii) Position of the Development Officer, Mr. A. Seltz:

- [26] Mr. Seltz did not attend the hearing but provided a written submission that was considered by the Board.

iv) Position of the Respondents, Mr. & Mrs. Plester:

- [27] Construction of the Appellant's house started four or five years ago and took almost three years to complete. Their yard still has not been landscaped and the fence is damaged. In addition, most of the neighbouring lots were full of garbage and debris.
- [28] A series of photographs was referenced to illustrate the development that has occurred over the years. These were marked "*Exhibit A*".
- [29] Before they purchased their lot, they were told that the lots located behind their lot would be developed into architecturally controlled luxury bungalows with landscaping included. After they committed to purchasing their lot, this changed but they could not get out of their contract.
- [30] They purchased their lot because of the architectural guidelines and controls that would be imposed in this neighbourhood. There were only supposed to be three builders developing the lots on Watson Point and the street across the black fence was to be adult community bungalows of a limited height. This did not happen and two-storey houses were built instead with a government housing project on the corner.
- [31] They invested a lot of money in their house on a walkway because that is what they wanted based on the information that adult bungalows were going to be developed behind them at a lower height with architectural guidelines. Their entire view now is of government housing.
- [32] They initially had no intention of building a tall fence. They spent \$130,000 to landscape their rear yard with a waterfall and trees along the metal fence. They were aware that houses would be built behind them, but they enjoy community living. Their house was the first to be built in this area.
- [33] A photograph of the rear yard was referenced to show the waterfall feature and the view of the government housing directly behind it. The initial corner fence was built to block that view because the residents and staff in that house were constantly looking into their rear yard. In addition, the lots behind them were not developed for over four years and were full of garbage and debris. They tried to screen the view by planting trees but in the winter when they lost their leaves they were invisible. Evergreen trees have now been planted but they are not tall enough yet to provide adequate screening.
- [34] A photograph was referenced to illustrate the impact on their privacy at night when the LED lighting on the house behind them is being used. The privacy screen falls at the window level of the house behind them.
- [35] The privacy screen does not extend the full length of the Appellant's rear yard and it existed at the time that they purchased their house.

- [36] A photograph of the view from their office window between 3515 and 3517 Watson Point was referenced to illustrate that neither of these lots have been landscaped in four years and that the area between the lots is usually full of garbage and debris.
- [37] A photograph of the initial privacy screen that was built in the corner to block the Government housing was referenced. This structure had to be removed because it was poorly constructed.
- [38] They did not want the fence to be brown but the City advised them not to change it until everything is resolved. The privacy screen was supposed to be a pergola structure with a walkway underneath but with all of issues that they were having all construction was stopped. The pergola was going to be stained black and the height was intended to block the view of the government housing.
- [39] They tried to sell their house for two years but did not receive any interest because of the market. They cannot sell their house for less than they paid. Three neighbours are moving for the same reasons. Two neighbours sold their houses for \$200,000 less than they paid. Other neighbours also want to sell their houses but are waiting for the market to improve.
- [40] None of the neighbours have ever approached them regarding their concerns. They talked to all of the neighbours on their street and advised them that the height would be reduced and it would be stained black. Everyone they talked to said that the changes were acceptable and that they understood what their view has turned into.
- [41] It was acknowledged that the height of the existing structure has to be reduced by 12 inches in order to comply with the approved development permit. The structure can be stained whatever colour is acceptable to the neighbours but no one that is opposed has ever talked to them about it. The Development Officer advised them that it does not have to be the same colour as the fence. It was their opinion that staining it black would be the best option.
- [42] They discussed the possibility of planting trees behind their lot to provide some screening with the City based on their initial understanding of development in this area. They did not want to erect the privacy screen but had no choice because of the money that they invested in landscaping their rear yard. The view from their rear yard is negatively impacted by the government housing and the fact that none of the lots behind them have been landscaped.
- [43] Mr. and Mrs. Plester provided the following information in response to questions from the Board:
- a) They were not aware of the opposition provided by the property owners who reside at 3418 Watson Place.

- b) They do have several letters of support but many of the neighbours that they talked to did not want to provide their personal information. There is a Homeowner's Association on their street and they did not think it was appropriate to approach them for support.
- c) Two letters of support were submitted to the Development Officer and more could be obtained if it is required.
- d) All they wanted to do was screen the view from their rear deck.
- e) All of the houses along the walkway are two storey structures.
- f) The lot was purchased because it was supposed to be an adult community street with adult bungalows similar to three existing developments in Windermere.
- g) They spent a long time deciding to purchase this lot and ultimately made the decision to purchase it based on what was supposed to be developed around it.
- h) The houses are much closer than they appear in the photographs.
- i) A drawing of the structure privacy screen after it is cut down by 12 inches was referenced. It was not extended all the way to the ground because the intent is to block out all of the views of debris and garbage and the resulting negative impacts when they are using their rear deck. The grey fence and pathway are not a concern, it is the fact that they have not been able to enjoy their property for four and a half years because of the undeveloped lots and debris and garbage in the area. When they are sitting on their rear deck they are still able to see people on the pathway which they like but the privacy screen blocks out the other negative views.
- j) The notification map was referenced to confirm the location of the two-storey houses that they are trying to block. 3531 Watson Point SW is the government housing on the corner and then the houses next to them.
- k) The Homeowners Association has only been established to share in the cost of lawn maintenance and snow removal.
- l) The government housing is an extended care facility that operates 24/7.
- m) They moved from an acreage but did not expect the same living situation when they moved to a more urban setting.
- n) They chose a lot in this area because of the architectural controls that would be imposed. Adult bungalows were going to be developed behind their lot but instead two-storey houses and government housing was developed. Therefore, the privacy screen was built in order to block the view of this house as well as garbage and debris on the adjacent lots. Their house was finished in 2013 and this problem has been

- ongoing for six years. The privacy screen was only meant to be a temporary structure but there does not appear to be any other way to block the view of this care facility.
- o) It was their opinion that because the structure will be reduced by 12 inches it will not have any impact on the amount of sunlight into their neighbour's yard. It was also noted that the house on that lot is only set back one foot from the lot lines and appears to be built outside of the building pocket.
 - p) They could not confirm whether the zoning changed to accommodate the development of the government housing. However, none of the residents in this area were notified about the development and no signage was ever erected.

v) *Rebuttal of the Appellant:*

- [44] The online response provided by the property owner who resides at 3418 Watson Place was submitted and marked "*Exhibit B*". It was noted that this neighbour objects to the privacy screen and does not seem to have the same concerns regarding the view of garbage from their rear yard.
- [45] With the exception of one cul-de-sac, two-storey houses have been developed in this subdivision.
- [46] Their landscaping will be completed within the next two weeks. It has been delayed because of the wet weather. However, they did not move into their house until September 2018 and have one year to complete the landscaping.
- [47] The area is now completely built out with the exception of a few lots that need to be landscaped. The Respondent indicated that the privacy screen was installed to block the view of garbage. However, the garbage has been removed and is no longer an issue so why is the screen still there?
- [48] The notification map was referenced to reiterate the fact that all four of the most affected neighbours who have a view of the structure from their property have submitted written responses in opposition to the development. He questioned which neighbours provided support to the Respondent. It was his opinion that residents in the cul-de-sac cannot see the structure and are therefore not impacted by the development.

Decision

- [49] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

Reasons for Decision

- [50] The proposed development, to erect a Privacy Screen at 3.05 metres in Height in the Rear Yard and Side Yard of a Single Detached House, is Accessory to Single Detached Housing which is a Permitted Use in the (RSL) Residential Small Lot Zone, pursuant to section 115.2(5) of the *Edmonton Zoning Bylaw*.
- [51] The wooden structure in question, which the Development Officer determined to be Privacy Screening, was built very close to the property lines at the side and rear of this pie-shaped lot. There are existing Fences along these property lines. There are wooden six-foot Fences separating the abutting lots and there is a wrought iron fence separating the Respondents' lot from a public walkway. The bottom six feet or so of the structure is open between the posts. The top four feet or so of the structure is filled in between the posts. The effect of the structure is to extend the Height of the existing Fences.
- [52] Pursuant to section 6.1 of the *Edmonton Zoning Bylaw*, Privacy Screening is defined as:
- A feature that obscures direct and otherwise unimpeded sightlines. Common examples include: vegetative screening, such as shrubs and trees, lattice, masonry or wooden walls, parapet walls, translucent glass or any combination of these or like features. Privacy Screening does not include a balustrade railing or similar railing system.
- [53] Pursuant to section 6.1 of the *Edmonton Zoning Bylaw*, a Fence is defined as:
- A structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.
- [54] Based on a review of these definitions and the evidence provided, the Board finds that the existing development that was constructed without an approved Development Permit is a Fence. This is because the structure was built immediately adjacent to the existing Fences and because the effect of the structure is to extend the Height of the existing Fences. The fact that only the upper portion of the structure is filled in between the posts does not change the fact that the structure should be characterized as a Fence rather than Privacy Screening.
- [55] Section 49.1(g) of the *Edmonton Zoning Bylaw* states:
- In the case where the permitted Height of a Fence, wall, or gate is 1.85 metres, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 metres, in order to provide additional screening from public roadways or incompatible adjacent Uses.

[56] Section 49.2(j) of the *Edmonton Zoning Bylaw* states:

In the case where the permitted Height of Privacy Screening is 1.85 metres, the Development Officer may vary the Height of Privacy Screening to a maximum of 3.05 metres, in order to prevent visual intrusion and provide additional screening from adjacent properties.

[57] Based on the Board's finding that the proposed development is a Fence and not Privacy Screening, the Development Officer exceeded his authority by allowing the Height of the Fence to be 3.05 metres.

[58] Even though the Board could grant a variance to allow the Fence to be as high as the Development Officer has allowed, doing so would be inappropriate in these circumstances for the reasons noted below.

[59] A portion of this Fence has been erected above a portion of the wrought iron Fence that runs parallel to the public walkway. This type of wrought iron fencing has been installed parallel to all of the public walkways in this subdivision. Based on the photographic evidence, it is the opinion of the Board that the wooden Fence adjacent to the wrought iron Fence is completely out of character along this portion of the public walkway and negatively impacts the amenities of the neighbourhood.

[60] Four of the five most affected adjacent property owners have provided written submissions and photographs in opposition to the proposed Fence. Their primary concerns include the Height of the structure and the fact that it does not comply with the architectural guidelines for this neighbourhood.

[61] The Board does not enforce architectural guidelines. However, the Board agrees with the concerns of these property owners and finds that the Height of this Fence is not characteristic of the neighbourhood and it materially impacts the use and enjoyment of these neighbouring parcels of land.

[62] The Board notes that the Development Officer imposed a condition on the approved development permit that the Height of the structure be reduced from 3.5 metres to 3.05 metres. However, even with this reduction in Height, the structure would still be unsightly and out of place at this location.

[63] For all of the above reasons, it is the opinion of the Board that the proposed development, an existing over height Fence, will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use and enjoyment of neighbouring parcels of land. Therefore, the appeal is allowed and the development permit is refused.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: Ms. S. LaPerle, Ms. D. Kronewitt Martin, Ms. G. Harris, Mr. A. Nagy

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*, 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.
2. 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 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: July 16, 2019
Project Number: 311652056-001
File Number: SDAB-D-19-103

Notice of Decision

- [1] On July 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 10, 2019. The appeal concerned the decision of the Development Authority, issued on May 30, 2019, to refuse the following development:

**Install one (1) Minor Digital On-premises Off-premises Freestanding Sign
(PATTISON | SHOPPES AT TERWILLEGAR)**

- [2] The subject property is on Plan 0220792 Blk 70 Lot 89, located at 14203 - 23 Avenue NW, within the CSC Shopping Centre Zone. The Terwillegar Towne Neighbourhood Area Structure Plan applies 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; and
- The Appellant’s written submissions.

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 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Mr. J. Murphy, Q.C., representing Ogilvie LLP:*

- [7] Mr. Murphy confessed his own bias in that he drives through this intersection three or four times a week and uses all four of the shopping centers. He loves the sign that has been erected on the site that is kitty corner to the subject site and believes that this is a perfect location for the proposed sign. There is no way that the proposed sign will impact the use, enjoyment or value of neighbouring properties or the amenities of the neighbourhood.
- [8] It was acknowledged that the proposed sign does require several variances. It was also noted that the Development Officer has characterized the monument sign for this shopping centre as a Freestanding On-premises Sign. In the past, monument signs were always considered an item of landscaping with a Fascia Sign on the front.
- [9] A SLIM map was referenced to illustrate that this intersection is located in a purely commercial neighborhood. Four very busy (CSC) Shopping Centre sites are at each corner of this large intersection. It was also noted that there is a large boulevard located between the property line of the subject site and the intersection. The shopping centre site located on the northeast corner of the intersection, kitty corner to the subject site has a similar configuration to what is being proposed with a digital sign behind the monument sign with the same setback requirements.
- [10] The City Standards Bylaw requires the property owner to maintain the boulevard even though they do not own it. Therefore, being allowed the setback for the sign seems to be a fair trade.
- [11] An aerial photograph was referenced to illustrate that this area is very commercial. The shopping centre sites located on all four corners of the intersection provide a wide variety of amenities for the residents of the surrounding communities.
- [12] A photograph of the digital sign that has been installed on the shopping centre site located kitty corner across the intersection was referenced. It is a curved linear sign and is larger than the majority of other digital signs in the city that are 200 square feet in size. Because this sign is larger is what results in the required 200-metre separation distance. This is a reciprocal distance issue.
- [13] In this case, the presence of the existing digital sign should not require a separation distance greater than 100 metres. The existing sign targets northbound traffic on Rabbit Hill Road and eastbound traffic on 23 Avenue. The proposed sign will be diametrically opposed to this sign and will target southbound traffic on Rabbit Hill Road and westbound traffic on 23 Avenue. Drivers will not be able to see both signs at the same time. Therefore, the separation distance requirement that would normally apply when dealing with two signs that are visible at the same time does not make sense in this case.

- [14] A photograph of the subject site was referenced to illustrate that the proposed sign is diametrically opposed and will target motorists travelling in opposite directions than the existing sign.
- [15] There are four Freestanding On-premises Signs on this site. Three signs are located along 23 Avenue and the fourth sign is located on Rabbit Hill Road at the south end of the site. As noted in a previous Board decision, the signs cannot all be seen at the same time because of the location of the BMO building.
- [16] The Development Officer has counted the monument sign in the sign total for the site which should not have been done. The result is that the maximum allowable number of signs has been exceeded. The aerial photograph submitted by the Development Officer was referenced. She has identified four Freestanding On-premises signs and has counted the monument sign as the fifth Freestanding On-premises sign which makes the proposed sign the sixth Freestanding On-premises sign. The site on the northwest corner does not have a monument sign but has five Freestanding On-premises signs. Therefore, the proposed development is not out of character for this commercial shopping centre area.
- [17] The monument sign on the shopping centre located east of the subject site was not included in the calculation of the total number of signs on that site. The site located on the northeast corner has five signs, a monument sign and a digital sign.
- [18] The calculations provided by the Development Officer are inconsistent and do not consider what really exists in this area. It was his suspicion that the Development Officer has not been to the site and until you see the area you cannot appreciate the number of signs that can be absorbed by the four shopping centres located at this intersection.
- [19] The digital signs will be separated by six lanes of traffic in every direction and will not be visible to motorists at the same time.
- [20] A monument sign is not a Freestanding Sign that would require consideration in calculating the total number of signs on a site or the remedial separation distance.
- [21] Section 6.1 of the *Edmonton Zoning Bylaw* defines Landscaping as “the preservation or modification of the natural features of a Site through the placement or addition of any or a combination of the following:.....(c) architectural elements such as decorative Fencing, walls and sculpture”. Photographs of the monument walls on the sites at the southeast, southwest and northeast corners of the intersection were referenced.
- [22] Section 6.2(7) of the *Edmonton Zoning Bylaw* defines a Fascia Sign as “any Sign painted on or attached to an exterior building wall, or any other permitted structure, on which a two dimensional representation may be placed, so that the Sign does not extend more than 40 centimetres out from the wall or structure nor beyond the horizontal limits of the wall....”.

- [23] Section 6.2(11) of the *Edmonton Zoning Bylaw* defines an Identification Sign as “a Sign which contains only the name and address of a building, Site, premises or occupants and the activity carried on in the building, Site or premises, but does not include any other advertising Copy”.
- [24] Section 6.2(8) of the *Edmonton Zoning Bylaw* defines Freestanding Signs as “any On-premises or Off-premises Sign supported independently of a building”.
- [25] The issue is whether or not the monument sign on the subject site is a Freestanding Sign or a Fascia Sign. Photographs were referenced to illustrate the monument signs on three of the four shopping centre sites. A photograph of the monument sign at McGrath Centre was referenced to illustrate that it simply identifies the shopping centre and does not contain any other advertising. In his opinion, this is not a Freestanding Sign, it is a decorative wall with Identification Sign imposed on the front.
- [26] It was his opinion that this interpretation is correct because of the proximity of the onsite freestanding pylon sign. It is unlikely that the sign required a variance but if it did this is a perfect example of what is acceptable and absorbable in this area. Both of these signs have existed on this site for many years.
- [27] A photograph of the existing digital sign on the shopping centre site located on the northeast corner of the intersection was referenced to illustrate that it has been erected immediately behind the monument wall. The monument wall is a landscaping feature that has imposed on it an Identification Fascia Sign, no advertising.
- [28] A photograph of the subject site was shown to illustrate the monument sign that has imposed on the front “Shoppes of Terwillegar Gardens”, the name of the shopping centre. The proposed sign will be erected behind this monument wall.
- [29] The Development Officer refused the permit because the separation space between the proposed sign and the closest Freestanding On-premises Sign is deficient which is incorrect. The proposed sign is 0.5 metres from a landscape feature that has imposed on it a fascia Identification Sign. The proposed sign is however, too close to one of Pattison’s pylon signs located on 23 Avenue and a variance is required. This variance is warranted because these signs cannot be seen at the same time because of an existing building and four large mature trees.
- [30] The Development Officer also refused the permit based on the calculation that there would be six signs on the site. This is incorrect, there will be five signs on the site if the proposed sign is approved and, as evidenced in the photographs provided, the site can absorb that number of signs.
- [31] A previous decision of the Board regarding a proposed sign at this location was referenced. It was his opinion that in that instance the Appellant did not provide sufficient information to the Board and that led to a decision of refusal. At that time the proposed sign was refused because three variances were required. However, the

Appellant did not address whether or not all of the variances were required and simply requested that they be granted.

- [32] In order for his client to have this sign approved, variances are required. Specifically variances in the setback, the total number of signs on the site, the distance from an existing on-site pylon sign and the distance from an existing digital sign. It is not absolutely necessary that a sign be developed on this site but it is a benefit to the land owner particularly during difficult economic times.
- [33] Signs in the City of Edmonton are treated differently from any other development. Signs are only approved for five years. Therefore siting a sign is done based on the fact that they will be reviewable and perhaps removable in five years
- [34] Neighbours opposed a previous permit application because of the location of the sign on 23 Avenue. Based on that feedback, it was agreed that a more appropriate location for the sign should be determined. The proposed new location for the sign is before the Board in this development permit application and the required variances will allow the sign to be erected in a more appropriate location.
- [35] It was noted that no objections from neighbouring property owners were received regarding this appeal.
- [36] In the previous refusal, the Development Officer did not characterize the monument sign as a Freestanding On-premises sign.
- [37] One of the reasons for refusal by the Board was that the proposed sign would contribute to a proliferation of signs in the area which would contribute to visual clutter at this intersection. It was his opinion that no evidence was provided to support this reason. These are large commercial sites that can absorb this number of signs and there is no other digital sign on this site.
- [38] The previous SDAB decision seemed to disregard the variance test available to the Board.
- [39] Motorists driving through this intersection will only be able to see one of the digital signs at a time. This is an intensely well-lit commercial area. It is a vibrant commercial area and the perfect location for a digital sign.
- [40] No trees will have to be removed from the site to accommodate the proposed sign. The existing trees will remain on either side of the proposed sign and mitigate the visual impact of the sign structure. The exiting monument wall will screen the sign pole. The trees will ameliorate the impact of the proposed sign on the neighbourhood.
- [41] He could not confirm whether or not shopping centre tenants would advertise on the proposed sign instead of using temporary signage which is a permitted use and an inexpensive option.

- [42] The circumstances for this proposed sign have changed since a previous application was refused by the Board.
- [43] The Court of Appeal decision, *Newcastle Centre GP v Edmonton (City)*, 2014 ABCA 295 was referenced. The Court found that the variance test as set out in section 687(3)(d) of the *Municipal Government Act* allows the Board to grant variances if the proposed development will 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. The required variances have to be found to do more than just simply interfere. It was his opinion that the proposed sign will not in any way interfere with the amenities of the neighbourhood, it will in fact augment them and is complementary to the area. Secondly, the proposed sign will not have any impact on the neighbouring three shopping centre sites just as the digital sign that exists on an adjacent shopping centre site has not had any negative impact on this site.
- [44] Subdivision Planning, specifically Transportation Services, does not object to the proposed location of the sign with some conditions.
- [45] Mr. Murphy provided the following information in response to questions from the Board:
- a) Three of the four shopping centres have monument signs to identify the site.
 - b) If the monument signs were Freestanding On-premises Signs, they would require variances because they are located within the required setback.
 - c) He disagrees with the Development Officer's classification of a monument sign as a Freestanding On-premises sign because these structures are usually approved as part of a landscaping plan. He questioned this change in policy because it is not the result of an amendment to the *Edmonton Zoning Bylaw*.
 - d) There is a sign on the Petro Canada site but it is not part of the subject site.
 - e) There are currently four signs on the site, without the monument sign. If the proposed sign is approved there will be five signs on the site.
 - f) The proposed sign will not interfere with the drive through for the Bank of Montreal, which is aware of the development permit application.
- ii) *Position of the Development Officer, Ms. K. Mercier:*
- [46] Ms. Mercier did not attend the hearing but provided a written submission that was considered by the Board.

Decision

[47] 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** and **ADVISMENTS**:

1. The development permit will expire on July 16, 2024 (five years).
2. The proposed Sign must comply with the approved plans submitted.
3. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 foot-candles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a));
4. Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada; (Reference Section 59.2(5)(b));
5. The proposed Sign shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 59.2(18))
6. The proposed Sign shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12));
7. The following conditions, in consultation with the Transportation department (Subdivision Planning), shall apply to the proposed Sign, in accordance to Section 59.2.11:
 - a. That, should at any time, City Operations 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 City Operations.
 - b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations 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.

- c. The proposed Sign shall be constructed entirely within private property. No portion of the Sign shall encroach over/into road right-of-way.
8. No existing landscaping on site shall be removed, including all trees and shrubs. Any damage to existing landscaping as a result of installation of this Sign will require the submission of a landscape plan that will require approval by the Development Authority.

ADVISEMENT:

1. 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, City Operations will require a safety review of the Sign prior to responding to the application.

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

1. The minimum required radial separation distance of 45.0 metres from any other Sign Use that is a Freestanding Sign on the same Site as per section 59.2(21) is varied to allow a deficiency of 12.4 metres, thereby decreasing the minimum required to 32.6 metres.
2. The minimum required Setback of 6.0 metres as per section 59E.3(5)(i) and Section 320.4(3) is varied to allow a deficiency of 4.4 metres, thereby allowing a Setback of 1.6 metres.
3. The maximum number of Signs as per Section 59E.3(5)(j) is waived. A maximum of 5 Signs is allowed.
4. The minimum required separation distance of 200.0 metres from a Digital Sign greater than 8.0 square metres or other Off-premises Sign as per Section 59E.3(5)(d) is varied to allow a deficiency of 90.0 metres, thereby decreasing the minimum required to 110.00 metres.

Reasons for Decision

[49] A Minor Digital On-premises Off-premises Sign is a Discretionary Use in the (CSC) Shopping Centre Zone, pursuant to section 320.3(37) of the *Edmonton Zoning Bylaw*.

[50] In the refusal, the Development Officer included the Shopping Centre's Identification Sign that reads "Shoppes of Terwillegar Gardens" as a Freestanding On-premises Sign and it was included in the calculation of the total number of Signs on the site.

[51] The Board notes that the method used by the Development Authority to calculate the total number of Signs on Sites in this area is inconsistent based on the evidence provided that the Identification Sign for the shopping centre located on the southeast corner of the intersection was not identified by the Development Officer as an Freestanding On-premises Sign.

[52] Section 6.1 of the *Edmonton Zoning Bylaw* defines Landscaping as:

The preservation or modification of the natural features of a Site through the placement or addition of any or a combination of (a) soft landscaping elements such as trees, shrubs, plants, lawns and ornamental plantings; (b) decorative hardsurfacing elements such as bricks, pavers, shale, crushed rock or other suitable materials, excluding monolithic concrete and asphalt, in the form of patios, walkways and paths; and (c) architectural elements such as decorative Fencing, walls and sculpture.

[53] Section 6.2 of the *Edmonton Zoning Bylaw* defines a Fascia Sign as:

Any Sign painted on or attached to an exterior building wall, or any other permitted structure, on which a two dimensional representation may be placed, so that the Sign does not extend more than 40 centimetres from the wall or structure nor beyond the horizontal limits of the wall. Fascia Signs may or may not be permanent. This definition includes banners or any other two dimensional medium.

[54] Section 6.2 of the *Edmonton Zoning Bylaw* defines an Identification Sign as “a Sign which contains only the name and addresses of a building, Site, premises or occupants and the activity carried on in the building, Site or premises, but does not include any other advertising Copy”.

[55] Based on a review of these definitions and the photographic evidence provided by the Appellant, the Board finds that the Sign identifying the shopping centre as “Shoppes of Terwillegar Gardens” is an Identification Sign. It is also a Fascia Sign attached to a decorative wall that is part of the architectural elements included in the landscaping on this Site. The wall with the Sign on it is not the type of structure that the regulations requiring separation distances between Freestanding Signs and limiting the number of such Signs on a Site are meant to deal with. The wall is low to the ground and the Sign on it does nothing more than identify the shopping centre onsite. This is in sharp contrast to the large, brightly lit Freestanding Signs on site.

- [56] Therefore, because this Sign is not a Freestanding Sign, an additional variance with respect to the distance between Freestanding Signs is not required pursuant to section 59.2(21). Further, the number of Freestanding Signs existing on the Site is only four, not five as found by the Development Officer. Therefore, the proposed Sign will increase the total number of Freestanding Signs on the Site to five, which exceeds the total number of such Signs allowed on the Site by one pursuant to section 59E.3(5)(j) of the *Edmonton Zoning Bylaw*.
- [57] The Board is of the opinion that the proposed Minor Digital On-premises Off-premises Freestanding Sign will not have a significant impact on the amenities of this neighbourhood or the neighbouring parcels of land for the following reasons:
- a) The Sign will be located at a major intersection that services four large shopping centres on each corner. The proposed Sign at this location is not out of character for this intensely commercial area.
 - b) The proposed location is not in close proximity to any residential development.
 - c) The existing Digital Sign targets northbound traffic on Rabbit Hill Road and eastbound traffic on 23 Avenue. The proposed sign will be located diagonally across the intersection and will target southbound traffic on Rabbit Hill Road and westbound traffic on 23 Avenue. Drivers will not be able to see both Signs at the same time. In the circumstances, the required 200-metre separation distance is not necessary.
 - d) There is a large boulevard area between the proposed Sign and the adjacent roadway which significantly mitigates the impact of the required setback variance.
 - e) Allowing an excess of one Freestanding Sign on this shopping centre Site is not out of character for this very commercial area. The Site on the northwest corner of the intersection has one more Freestanding Sign than is allowed. As well, the mature trees onsite and a building adjacent to the proposed Sign's location will block the view of the other Freestanding Signs onsite.
 - f) None of the mature trees onsite will have to be removed to accommodate the proposed Sign. In addition, the proposed Sign will be located behind the existing Identification Sign, which will screen the Sign post and further mitigate the impact of the Sign.
 - g) No letters of objection were received and no one attended the hearing in opposition to the proposed development.

[58] The Board was not persuaded that any of the required variances for the proposed Sign would negatively impact the neighbourhood or neighbouring parcels of land and therefore could not justify refusing this development permit application.

[59] For all of the above reasons, the appeal is allowed and the development is granted.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: Ms. S. LaPerle, Ms. D. Kronewitt Martin, Ms. G. Harris, Mr. A. Nagy

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 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 the Sustainable Development Department, 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.