

Edmonton Subdivision and Development Appeal Board

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Date: July 16, 2015
Project Number: 160590710-001
File Number: SDAB-D-15-126

Notice of Decision

This appeal dated May 21, 2015, from the decision of the Development Authority for permission to:

Construct a Minor Digital On-premises Off-premises Sign (double sided facing north and south)

on Plan 5701HW Blk 11 Lot D and Plan 5701HW Blk 11 Lot A, located at 12435 - 97 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 8, 2015. The appeal was originally scheduled to be heard on June 17, 2015, but was subsequently rescheduled to July 8, 2015 due to a major event occurring in the City of Edmonton. The decision of the Board was as follows:

Summary of Hearing:

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.

Motion:

“That SDAB-D-15-126 be raised from the Table”.

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

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a Minor Digital On-premises Off-premises Sign (double sided facing north and south) located at 12435 – 97 Street NW which was approved subject to conditions, and subsequently appealed by another Sign Company. The subject Site is zoned CSC Shopping Centre Zone and is within the Yellowhead Corridor Area Structure Plan.

Prior to the hearing a copy of the Yellowhead Area Structure Plan was provided to the Board.

The Board heard from Mr. V. Verma and Mr. P. Dhillon, representing the Appellant, Icewerx Consulting, who provided the following information:

1. They have a permit for a sign that is within 10 metres of the proposed Outfront Media sign (formerly CBS Outdoor).

2. They had obtained the development permit to construct a Minor Digital Off-premises Freestanding Sign in January 25, 2012.
3. They submitted Exhibit "A" which included the following documents:
 - a. The January 25, 2012 development permit application (118347852-001).
 - b. Photos and construction drawings of the proposed development.
 - c. Invoices for work done for piles, electrical work and labour (all done in 2012).
 - d. Documentation of insurance which was purchased in 2015.
4. A copy of the lease document was submitted (dated 2011) and marked Exhibit "B".
5. Photos of the site were shown which are to be provided to the Board after the hearing; to be marked Exhibit "C".

Mr. Verma and Mr. Dhillon provided the following responses to questions:

1. Icewerx Consulting is an advertising business.
2. The proposed sign has an area of approximately 18 square metres.
3. The long delay from the issuance of the development permit in 2012 to constructing the sign had occurred because of a dispute between property owners of the site. Out of courtesy to the property owners, work was suspended on this site and they transferred their efforts to other projects.
4. The validity of the permit has been maintained because the electrical work had been done within 90 days of the issuance of the permit.
5. They provided a photo of the base support pole, which is now in the ground (marked Exhibit "C").
6. Neighbours were aware that a sign would be going up on the property.
7. The property owners were notified of the Outfront Media application, which drew their attention to the potential conflict in the required separation distance.

The Board heard from Mr. S. Ahuja, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. He provided an aerial photograph (marked Exhibit "D") showing the location of several signs in the area including the two freestanding On-premises Off-premises Digital Signs in question and another Temporary Sign.
2. He confirmed that the distance between the Outfront Media Sign and the Icewerx Consulting Sign would be approximately 48 metres, which is well short of the 100 metre separation distance requirement.

Mr. Ahuja provided the following responses to questions:

1. The validity of the Icewerx Consulting permit would be maintained if construction had started within 90 days of the issuance of the permit.
2. When Outfront Media had filed its application for a permit they had been asked to provide an off-site plan showing other signs and the Icewerx Consulting Sign was not on that plan.

3. Signs were not plotted at the time the Icewerx Consulting permit was approved in 2012 and site visits were not normally employed to determine Sign locations. Plans are underway by the City of Edmonton Sustainable Development Department to more accurately plot signs once permits have been issued.

The Board heard from Mr. D. Hollman of Outfront Media who provided the following information:

1. He distributed printed materials (marked Exhibit "E") and noted that a photo taken on June 22, 2015, showed no indication of any work on the site of the Icewerx Consulting Sign, specifically, the pole for the sign had not yet been erected.
2. It is his practice to check with the City of Edmonton Sustainable Development Department, Epcor and other sources prior to making Sign applications. A thorough review was done prior to filing his application in September 2014; and there was no evidence of the Icewerx Consulting Sign or permit.
3. It typically takes less than a year from the issuance of a permit to order and install all of the components of a Minor Digital Sign. He was very skeptical that there was a basis for the long delay from the date of application by Icewerx Consulting to the very recent erection of a base pole.

Mr. Hollman provided the following responses to questions:

1. His company has not yet undertaken any on-site work although they had completed the preliminary design.
2. He had completed an extensive on-line search for existing and approved permits but found nothing.
3. He did not find evidence of an electrical inspection having been completed for the Icewerx Consulting Sign.
4. The existing pole on the Respondent's site had been put up after June 22, 2015 and he noted that there are a number of instances in which permits have been issued and not acted on, simply to exclude competing signs.
5. The document for electrical work submitted by the Respondent may have been for an estimate rather than an invoice.

In rebuttal Mr. Verma made the following points:

1. The electrical work had been completed on March 23, 2012.
2. Electrical inspections are not completed until a Sign is in place.
3. The proposed Outfront Media Sign would be only 48 metres from their Sign and the close proximity of competing Signs to an intersection can interfere with driver decision points.

Mr. Verma provided the following responses to questions:

1. He conceded that the distance between their Sign and the Outfront Media Sign is 48 metres and not 10 metres.
2. The pole was installed two to three weeks ago.
3. The Icewerx Consulting Sign will be complete and ready for inspection in three to four weeks.
4. Their permit is valid for five (5) years.

Decision:

The appeal is ALLOWED and the decision of approval of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. A Minor Digital On-premises Off-premises Sign is a Discretionary Use in the CSC Shopping Centre Zone, Section 320.3(35).
2. The Icewerx Consulting Development Permit (118347852-001) issued on January 25, 2012, is valid as electrical work was commenced within a 90 day period as per the invoice included in Exhibit "A". This permit is valid for a five-year period from the issuing date.
3. The Board understands that the Appellant did not proceed after the initial electrical work was completed because of a landowner dispute and they wished to show good faith in waiting until this was resolved prior to recommencing construction.
4. The Board accepts that electrical inspections for signs are usually done only at the completion of the construction of signs.
5. The Board finds a pole has been installed and the Sign should be completed within three to four weeks.
6. The Board also finds that the Respondent had done due diligence in consulting with the City of Edmonton Sustainable Development Department and with Epcor and could not find any records of an Icewerx Consulting Development Permit.
7. The proposed Outfront Media Sign contravenes Schedule 59E.3(5)(d) of the *Edmonton Zoning Bylaw* which requires a separation distance of 100 metres.
8. The Board finds the close proximity between two Digital Signs would contribute to a proliferation of Signs in the area and may also create a hazardous situation in close proximity to a major intersection.
9. Based on the above, the Board concludes that allowing this development would unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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*, 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.

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

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Date: July 16, 2015
Project Number: 152684111-003
File Number: SDAB-D-15-146

Notice of Decision

This appeal dated June 3, 2015, from the decision of the Development Authority for permission to:

Increase the Height of an approved Fascia Minor Digital On-premises Off-premises Sign from 8.0 metres to 11.4 metres

on Plan 7069KS Blk 6 Lot 13, located at 14815 - Yellowhead Trail NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 8, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to increase the Height of an approved Fascia Minor Digital On-premises Off-premises Sign from 8.0 metres to 11.4 metres, located at 14815 - Yellowhead Trail NW. The subject Site is zoned IB Industrial Business Zone and is within the Yellowhead Corridor Area Structure Plan.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant received on July 3, 2015
- A copy of the Yellowhead Corridor Area Structure Plan

The Board heard from Mr. D. Frunchak and Mr. M. Doherty, representing the Appellant, MBD Management Inc., who provided the following information:

1. The reason for the appeal was to deal with the height of the sign on the building that they had constructed.

2. On April 22, 2014, the Subdivision Development Appeal Board (SDAB) allowed the Appellants to have a sign 11.4 metres in height, which exceeded the maximum allowable height of 8.0 metres.
3. After speaking with the City of Edmonton Sustainable Development Department they modified the building so that the sign did not project above the roofline.
4. Throughout the development permit application and the SDAB appeal process the sign was always shown as being 11.4 metres in height. The City of Edmonton issued construction permits for the alterations to the roofline based on the 11.4 metre height.
5. The owners have gone to great efforts to improve the facade of the building and the roof now covers the back of the sign. The required modifications have made the building more attractive.
6. They canvassed surrounding businesses and received nine letters of support and there was no opposition to the sign and the modified roof.
7. They believe the SDAB intended to approve the sign at a height of 11.4 metres and it was his opinion they had stamped the plans to that effect. In error, a condition was added to the permit, which stated that the maximum allowed height was 8.0 metres.
8. The 8.0 metre condition came to the attention of the City of Edmonton Sustainable Development Department and was brought to the attention of the owners. The owners, after discussion with the City of Edmonton Sustainable Development Department, decided to proceed with this application to obtain a height variance of 3.4 metres so as to be consistent with the 11.4 metre height approved by the previous SDAB panel.

Mr. Frunchak and Mr. Doherty provided the following responses to questions:

1. MBD Management is a family owned company which Mr. Doherty manages and he acted as project manager for the proposed development. He also represented the owner at the last SDAB hearing.
2. An extended parapet wall was added behind the sign at a cost of approximately \$200,000.00.
3. They referred the Board to page two of their submission showing the building prior to and after the construction of the parapet wall.
4. Originally a third party designed the proposed 11.4 metre high Fascia Sign and they were unaware that there were problems with the original design until they took over the project and started to consult with City of Edmonton Sustainable Development Department.
5. The SDAB had full knowledge of the 11.4 metre height of the sign when the development was granted.
6. They would not have undertaken the expense of parapet extensions had they understood that the previous SDAB had not approved the 3.4 metre height variance.
7. It was their opinion the issue of precedent should not be a determining factor. Their understanding is that the SDAB is not bound by any previous decisions varying a height requirement.
8. They referred the Board to their pictures which indicated that the surrounding area is primarily industrial and the site is on a major intersection.
9. They had canvassed the surrounding businesses and done their due diligence. There are nine letters of support from surrounding businesses included in their documents.

10. They are in the business of property development and not the sign business so they are unlikely to be back before the Board on other sign issues.
11. The total area of the Sign is 36.45 square metres which requires a 200 metre separation from other digital signs. They confirmed they were granted a variance of 47 metres at the last SDAB hearing as there is another digital sign 153 metres away from this one.
12. It was their understanding that their former Development Permit was no longer in effect and they are applying for a new 5 year Development Permit at this time.

The Board heard from Mr. S. Ahuja, representing the City of Edmonton Sustainable Development Department who provided the following responses to questions:

1. He confirmed that the 11.4 metre height was addressed at the last SDAB hearing and confirmed that the plans approved and stamped by SDAB at the previous hearing had the 11.4 metre height provision.
2. He confirmed that the Development Officer had no authority to vary the heights of signs.

In rebuttal Mr. Frunchak made the following points:

1. He confirmed that the height was addressed at the previous SDAB hearing.
2. In his view the addition of a condition stating that the maximum allowed height is 8.0 metres as per the *Edmonton Zoning Bylaw* was added in error.
3. They have gone to considerable effort to meet the requirements of the City of Edmonton Sustainable Development Department.

Decision:

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:

- a) The development permit is valid until July 23, 2020.

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

- a) A variance of 47 metres in the minimum required separation distance is granted as another Digital Sign is located 153 metres from the subject Sign, as per Schedule 59F.3(6)(d).
- b) A variance of 3.4 metres is granted to the maximum allowable Height as per Schedule 59F.3(6)(b).

Reasons for Decision:

The Board finds the following:

1. A Minor Digital On-premises Off-premises Sign is a Discretionary Use in the IB Industrial Business Zone, Section 400.3(40).
2. The previous SDAB decision of April 22, 2014, approved the plans and stamped them with a Height at 11.4 metres; however, in the conditions, a standard regulation height of 8.0 metres was included. This discrepancy was not noticed until some time later.
3. When the discrepancy in Height was noticed the Appellants decided to terminate the previous decision and apply for a new development permit for the Sign Height of 11.4 metres.
4. Throughout all the proceedings the Height has always been shown to be 11.4 metres.
5. The Appellant has worked with the City of Edmonton Sustainable Development Department to make the building more aesthetically pleasing and has enclosed the Sign so it would not project above the roof line.
6. Based on photographic evidence the proposed development is reasonably compatible with the surrounding neighbourhood and finds no evidence that the Sign will create safety concerns.
7. Nine letters of support were received from surrounding businesses with no opposition.
8. It is the opinion of the Board that the enclosed Sign with a variance of 3.4 metres to the maximum allowed Height is reasonably compatible with the surrounding neighbourhood and 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.

Important Information for 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.
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.

Ms. P. Jones, Presiding Officer
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Date: July 16, 2015
Project Number: 159325021-002
File Number: SDAB-D-15-123

Notice of Decision

This appeal dated May 26, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to an existing Single Detached House (Driveway extension, existing without permits)

on Plan 0740223 Blk 1 Lot 19, located at 2244 - 32B Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 8, 2015. The appeal was originally scheduled to be heard on June 17, 2015, but was subsequently rescheduled to July 8, 2015, due to a major event occurring in the City of Edmonton. The decision of the Board was as follows:

Summary of Hearing:

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.

Motion:

“That SDAB-D-15-123 be raised from the Table”.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14 day appeal period, pursuant to Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26. A receipt from Canada Post confirms that the decision of refusal was delivered to the Appellant on May 25, 2015, and the appeal was filed one day later; therefore the Board finds that the appeal was filed during the appeal period and assumed jurisdiction.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations to an existing Single Detached House (Driveway extension, existing without permits), located at 2244 - 32B Street NW. The subject Site is zoned RSL Residential Small Lot Zone and is within the Meadows Area Structure Plan.

The development application was refused because the existing concrete extension does not lead to an overhead Garage door or Parking Area; Front Yards shall be Landscaped with trees, shrubs, flower beds, grass, ground cover or suitable decorative hardsurfacing; the area hardsurfaced for a Driveway, not including the area used as a walkway shall not exceed a width of 6.2 metres; and

because the Landscaping condition imposed on the approved Development Permit for the Single Detached House has not been fulfilled.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Canada Post confirmation of delivery
- Petition of support submitted by the Appellant on July 8, 2015
- Written submission of the Development Officer received on July 8, 2015.

The Board heard from the Mr. H. Panesar, the homeowner. He was accompanied by the Appellant, Mr. R. Kamdar who had filed the appeal on Mr. Panesar's behalf. The following information was provided to the Board:

1. The driveway was poured by his father while he was on a business trip to California.
2. His father believed the extension would provide a play area for the children.
3. Mr. Panesar approached the developer of the subdivision who advised him to remove the concrete extension.
4. Mr. Panesar then approached the City of Edmonton Sustainable Development Department to determine if there was an alternative to cutting out the driveway.
5. He submitted a petition indicating support from several neighbouring property owners.
6. He is prepared to provide landscaping on top of the concrete driveway extension.
7. He has two cars, both of which are kept in the garage. The extension is not required or used for parking.
8. He showed a photo indicating the view of the front of his property, which he will e-mail to the Board and will be marked as Exhibit "A".
9. There is a bed landscaped with shrubs and flowers along the concrete extension from the front property line to the house.

Mr. Kamdar provided the following responses to questions:

1. The original house was built in July, 2013, and the driveway was poured a year later in 2014.
2. There is a concrete walkway on the east side of the house leading to the backyard and a concrete patio in the backyard. There is extensive landscaping both in the backyard, the west side yard and a portion of the front yard.
3. He was prepared to provide some landscaping on top of the concrete driveway extension to avoid the costly process of cutting out the concrete.

The Board heard from Mr. J. Booth, representing the City of Edmonton Sustainable Development Department who provided the following responses to questions:

1. He agreed that a portion of the concrete area to the west of the driveway could be considered a sidewalk.
2. All or part of the concrete to the west of driveway would meet the Development Authority's landscaping concerns if it were edged with beams and filled with landscaping materials.
3. He agreed that while there are restricted width dimensions for driveways in the *Edmonton Zoning Bylaw* there are none for sidewalks. He disagreed that all of the concrete west of the

driveway to the front entrance of the house could be considered a sidewalk as it does not lead to an actual door. He confirmed this requirement was not stated in the *Edmonton Zoning Bylaw*.

4. In his view the landscaping requirement of the *Edmonton Zoning Bylaw* would be met if the owner filled up the contested area with plants or grass material.

The Appellant declined the opportunity for rebuttal.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is VARIED. The development is GRANTED, subject to the following CONDITION:

The area indicated by the Board on the attached site plan is to be entirely covered with grass and / or shrubs, trees or flower beds.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RSL Residential Small Lot Zone, Section 115.2(4).
2. The Board has determined that the walkway could be the same width from the stairs to the Front Lot Line abutting the Driveway. The permissible width of the Driveway is 6.2 metres as it leads to a double Garage.
3. The condition imposed by the Board will provide Landscaping in the area not designated as a walkway or driveway.
4. The Landscaped area in the Front Yard will prevent parking other than on the Driveway or in the existing double car Garage and will enhance the aesthetics of the subject site and the amenities of the area.
5. Providing Landscaping in this area of the Front Yard will fulfil the requirements of Section 17.1(1)(a) of the *Edmonton Zoning Bylaw* for the previous development permit application (130357336-001).
6. Based on the above, it is the opinion of the Board, that the proposed development, with the added condition, 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.

Important Information for Applicant/Appellant

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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.
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.

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