



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: July 7, 2016  
Project Number: 220651665-001  
File Number: SDAB-D-16-146

**Notice of Decision**

[1] On June 22, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 31, 2016**. The appeal concerned the decision of the Development Authority, issued on May 25, 2016, to refuse the following development:

**To install (2) Freestanding On-premises Signs (GRIESBACH VILLAGE).**

[2] The subject property is on Plan 1320318 Blk 27 Lot 1, located at 9704 - 137 Avenue NW and Plan 1322652 Blk 27 Lot 3, located at 581 - Griesbach Parade NW and Plan 1523747 Blk 27 Lot 5, located at 503 - Griesbach Parade NW, within the GVC Griesbach Village Centre Zone. The Griesbach Neighbourhood Area Structure Plan applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer’s written submissions; and
- Comments of opposition received by the SDAB office.

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

- Exhibit A - The Appellant’s written submissions; and
- Exhibit B - Aerials and Special Area Boundary map.

**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 Appellant, J. Murphy, QC*

[8] The Appellant did not agree that the online submission was a comment of opposition as the proposed development complies with Griesbach Neighbourhood Area Structure Plan (“Griesbach NASP”).

[9] The parcel of land was originally owned by the Federal Government. The Crown went into arrangement with Canada Lands to redevelop the parcel. The Appellant’s client is developing the GVC Griesbach Village Center zoned portion of land.

[10] Signage is meant to serve two functions: provide signage to the internal residents and attract business from non-resident consumers.

[11] The southeast corner of the site is the intersection of 137 Avenue and 97 Street. This location should be kept in mind when contemplating the Griesbach NASP.

[12] The main access off of 137 Avenue is Griesbach Parade. To the south of the site is Northgate Shopping Centre. To the west of the site is another commercial centre, including a Boston Pizza. On the northeast corner is a large city transit facility. This area is one of the most highly commercial corridors in the City.

[13] Under Tab 1, is a copy of the Refused Development Permit. There are 2 signs in question. Sign 1 (a pylon sign) is located east of Griesbach Parade and is setback to provide scale with building. This sign requires a variance to the maximum allowable Height. Sign 2 (curbed monument sign) is on the corner of 137 Avenue and 97 Street and is a Permitted Use that does not require any variances. However, because both signs were applied for under one application, if one is refused, then both are refused.

[14] Under Tab 2, is a copy of the GVC Griesbach Village Centre Zone. The Appellant drew the Board’s attention to the following sections:

- Section 940.6(3)(w) states a Freestanding On-premises Sign is a Permitted Use in this Zone.
- Section 940.6(5)(d) states Buildings shall be built to the Front and Side Lot Lines except that buildings may have a maximum Setback of 3.0 metres to accommodate street related activities, such as sidewalk cafes, architectural features and landscaping that contribute to the pedestrian oriented shopping character of the area or to accommodate roadway design or to preserve existing trees.

- Section 940.6(5)(e) states all development shall create a pedestrian friendly environment on a shopping street, which may include such things as entrance features, outdoor sitting areas, canopies, landscaping and other features that lend visual interest and a human scale to development along the street.
- Section 940.6(5)(q)(i) states (in part) Signs shall comply with the regulations found in Schedule 59E of this Bylaw, with the intent to complement the pedestrian-oriented commercial environment, except that, the maximum Height of a Freestanding Sign shall be 6.0 metres.

[15] The reference to “pedestrian friendly environment” clearly refers to the interior of the site, because it would not make sense on the busy intersection of 137 Avenue and 97 Street.

[16] Under Tab 3, the first page is a drawing which is provided to give a general overview of what the site should look like. The red circle indicates Sign 1, the pylon sign requiring the Height variance. The red square indicates Sign 2, the monuments sign, requiring no variances. The blue circles indicate future signs, which are not applied for yet. The center is being built in phases. A detailed comprehensive sign design plan has not been provided as the Appellant’s client is not sure who the tenants will be and their signage requirements, other than the two signs subject to this application. All signs are designed to complement the center. The second page under Tab 3 is a site plan. There is a notation that there has been a revision, however the location of the signs is what was always intended. Sign 1 is located 8.4 feet and 3.5 feet from the two nearest property lines and Sign 2 is located 3 feet from the two nearest property lines.

[17] Under Tab 4 are renderings and engineering drawings of the proposed Sign 1. The pylon sign will be located at the entrance identify and Griesbach Village and specific vendors. The third drawing depicts where the sign fits in location to the property. The sign is set in, but still visible for people walking by.

[18] Under Tab 5 are renderings and engineering drawings of the proposed Sign 2. The monument sign is a Permitted Use that is well under the maximum allowable sign Height.

[19] Under Tab 6, is a copy of under Schedule 59E, which is applicable generally to CSC Shopping Centre Zones. Section 59E.2(3)(a) states that the maximum Height of a Permitted Freestanding On-premises Sign is 8.0 metres. The Development Officer may use his variance power to allow a Freestanding On-premises Sign up to 10.0 metres in Height if a Site zoned residential is not within 60.0 metres of the commercial Site. In the Appellant’s opinion, all the GVC Zoning did was change the maximum allowable Height from 8 metres to 6 metres. It did not touch the remainder of that section which empowers the Development Officer to grant a variance in Height of up to 10.0 metres. In the Appellant’s opinion, the Development Officer could have approved Sign 1.

- [20] Under Tab 7, the Appellant determined the approximate sign area of each sign. Sign 1 is approximately 12.90 square metres in size, just over half of what otherwise is allowed. Sign 2 is approximately 17.31 square metres in size.
- [21] Under Tab 8, an excerpt is provided from the *Edmonton Zoning Bylaw* and the *Municipal Government Act* that provides a sign is considered a building. The underlying zone provides for zero-lot line for buildings.
- [22] The Appellant submitted that the Griesbach NASP supports the proposed development. This plan implemented many years ago before 137 Avenue changed to 6 lanes, so is now even more important.
- [23] At pages 19 -20 of the NASP, it provides the following:

#### Village Centre

The plan designates a village centre at 97 Street and 137 Avenue. To be successful, there must be a critical density of uses including housing, to encourage an active and vibrant centre. As a main focus of activity, up to 400 dwelling units and 18,500 square metres of commercial space is anticipated.

The village centre will provide a wide variety of goods and services to the surrounding neighbourhoods. It will be attractive and comfortable to users- a feature in its own right. The concept and design principles for the various component of the village centre are:

Access: the primary vehicular access to the village centre will be from a loop road that connects both 97 Street and 137 Avenue to the axial roadway to the district park. As such, this links much of the plan area, and external users, to the village centre. There will also be some site access between the loop road and the 97 Street/137 Avenue intersection.

...

Pedestrian Orientation: in keeping with a pedestrian orientation, buildings on both sides of the loop street will be located with minimal setback to the street to provide a fairly continuous urban frontage on the loop street. Uses fronting the streets will be primarily retail, personal service, or restaurants and similar uses. The street orientation will be extended into the area south of the loop road, primarily along the axial alignment. The vehicle movement system is to support the village centre, not to overpower it.

...

Built Form: buildings will be oriented to the public street, emphasize the extension of the axial focus south of the loop road, and take advantage of the amenity value of the adjacent waterway system. Commercial development (except perhaps for a hotel, etc.) along the loop road will be primarily limited to the first one or two storeys, with residential development above to a maximum of four storeys. Residential development, when free standing, may be up to four storeys.

This village centre will not include typical 'big box' development, like many other arterials in Edmonton, but be smaller scale, pedestrian oriented in a 'high street' manner with a high level of landscaping. It is anticipated that the village will contain a significant food store, perhaps on the order of 5,000 m<sup>2</sup>. The village centre will provide a variety of natural and built form experiences through attention to building design, ground level relationships, texture, signage, and colours. The centre is to be thematically integrated.

...

Tree Preservation: there are many fine tree specimens that will fall within the village centre. Wherever feasible, they will be incorporated into yards and retained in parking areas to provide visual amenity. In particular, the amur maple planting along 97 Street is to be retained wherever possible.

[24] The Appellant submitted that the proposed Signs comply with the Griesbach NASP. The Signs are located at the perimeter of the site and therefore the internal portion of the centre is going to have walkability as contemplated by the Griesbach NASP. Further, as the Griesbach NASP provides that trees are to be retained in this area, non-resident users will not be aware of what the center offers unless the sign is higher.

[25] At page 23 of the Griesbach NASP, it indicates that 97 Street carries about 40,000 vehicles per day and 137 Avenue carries about 30,000 vehicles per day. These stats, however, are well over 10 years old.

[26] At page 36 of the Griesbach NASP, it provides the following:

For both low and medium density housing and the village centre, a 20% to 30% increase in building heights over standard zones will allow for taller buildings and steeper roofs. Front and side yards will be smaller, to provide for a more pedestrian friendly street oriented environment.

[27] The Appellant stated that the intent is to have village center go up rather than out, that is vertical density. Therefore, Sign 1 at a Height of 7.5 metres on the exterior of the Site along the busy roadway will not appear out of place given the background of taller buildings. The heights for signs are lower to reflect pedestrian scale, which makes sense for an interior site, but is at odds for the exterior of the site. The proposed sign is still lower than the 8 metres maximum provided in the conventional zone.

[28] In summary, the Appellant concluded that the success of the development will depend on servicing both residents of Griesbach and outside users who, once they have entered the site, can go out and enjoy a pedestrian friendly environment.

[29] The Board asked the Appellant to clarify the Development Officer's comment that there was insufficient information to complete the application, specifically missing the width of Sign 2 and exact location. The Appellant stated the information provided is enough to make a decision.

[30] The Board asked the Appellant if he agreed with the suggested conditions of the Development Officer. In terms of the first condition, it is standard condition that would apply in any event as the Appellant is not requesting a variance to that particular section. The Appellant stated that Board has the dimension and location of the signs.

[31] The Appellant does not agree with any conditions regarding trees. There is nothing in *Edmonton Zoning Bylaw* that speaks to tree retention. Their intention is to retain as many trees as possible, but some were lost already because of the drainage plan. The monument

sign is outside the tree line. There is no intention to touch any remaining deciduous trees on 137 Avenue. Further, the monument sign is a Permitted Use that complies with the bylaw so conditions cannot be imposed. The conditions were not listed on the Reasons for Refusal. In this appeal, a variance to Height is at issue, not Setbacks. Conditions should not be applied at the sign permit level.

[32] The Board asked whether the same result could be achieved for the pylon sign through additional width rather than height. The Appellant did not agree because of the trees and reminded the Board that the sign is still under the allowable CSC Shopping Centre Zone Height.

[33] The Board asked the Appellant whether the picture at the end of tab 5 shows the finished product or is maybe a few years out. The Appellant stated if the bushes were removed, this is what it would look like.

[34] The Board asked what variances would be required for other signage not being proposed under this application. The Appellant stated there may be an excess in the maximum number of allowable signs and a Height issue, but in his opinion, in the future those issues can be dealt with at the Development Officer level.

[35] The Appellant referred the Board to the Alberta Court of Appeal decision in *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 (“*Newcastle*”). There is only one test for a variance found in Section 687 of the *Municipal Government Act*, namely will the variance 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 test is not about the reasonableness of the request. The real issue is the potential harm. The sign is located on the exterior of the site. The person potentially affected by the increase in Sign Height is the travelling public, who are used to seeing signs. The users across the way are commercial users, which is the ambience of the neighbourhood. On the basis of *Newcastle*, the Board does not start with proposition that the bylaw variance creates an immediate presumption of harm.

[36] Upon questioning from the Board, the Appellant stated that a package and presentation was submitted to the Community League, which included the proposed signage. Most neighbours are commercial properties.

[37] Upon questioning from the Board, the Appellant confirmed that the Right-of-Way was designed to withstand the Sign.

[38] Upon questioning from the Board, the Appellant confirmed that the Development Permit for the commercial site has an approved landscaping plan. This plan addresses tree and conditions concerning tree retention and must be complied with.

[39] Upon questioning from the Board, the Appellant was not sure if the application was submitted to the Transportation Department.

ii) *Position of the Development Officers, B. Noorman, S. Ahuja, S. Ramey*

- [40] The Development Officer stated there is no use class for a monument or pylon sign. The use class is a Freestanding On-Premises sign.
- [41] Any variance to a Permitted Use is a Discretionary permit.
- [42] The Applicant advised that the sign was overheight. Further, she required additional information. The submitted plans indicate a “TBD” in regards to the width of the monument sign. Her request for considering the proposed signs under separate applications was refused. The Appellant requested a refusal.
- [43] A Comprehensive Sign Design Plan should be required given the amount of signs being proposed on the site.
- [44] Under Section 11.4(2), the Development Officer cannot vary maximum allowable Height.
- [45] The Development Officer does not agree with the Appellant that the proposed development is in keeping with Griesbach NASP.
- [46] Tree retention is important so that is why the proposed conditions were included.
- [47] The Board should not approve a sign with a Width of “TBD”.
- [48] Upon questioning from the Board, the Development Officer confirmed that an approved landscaping plan does exist. She has not seen it as it was not submitted as part of this Development Permit application. She does have the authority to impose landscaping conditions.
- [49] Referring the Board to page 36 of the Griesbach NASP, policies cited should extend to external streets.
- [50] The Board asked the Development Officer to comment on the Appellant’s argument that she has variance powers over Height. The *Edmonton Zoning Bylaw* allows a maximum height of 6 metres, which can be common throughout the city. It is inappropriate to dissect the Zoning sections as proposed by the Appellant. The reason for the Height restriction is to provide a pedestrian friendly environment. Pedestrians should not have to turn their head upwards to view a sign.
- [51] The Board asked the Development Officer if the Development is approved with no condition, is that an implicit variance to the landscaping plan already committed to. In response, the Development Officer stated when a sign is placed, a tree can potentially be removed and it can be contrary to the landscaping plan. She does not believe there are permits for the interior of the site, so for those areas there is no approved landscaping plan. It

is the responsibility of the applicant to provide the landscaping plan upon a Development Permit Application for a sign.

[52] The Development Officer stated the Appellant must deal with any issues regarding the Right-of-Way.

[53] The Development Officer stated that if a variance is allowed, the vision for Griesbach would be different. It would start to look like other developments on the corner. The exterior telegraphs the interior of the site. The neighbour in opposition also spoke to this vision.

*iii) Rebuttal of the Appellant*

[54] The Development Officer did not say how the Section 687 test was not met. In the Appellant's opinion, the sign location is perfect, although slightly over in Height. The test in Section 687 met. There is no reason to refuse.

[55] Referring the Board to Tab 3, everything within the dotted line has a Development Permit and construction is ongoing. There is an approved landscaping plan.

[56] Referring the Board to Tab 3, there is a notation that states "remove ex tree to satisfaction of the City of Edmonton." These trees are already gone because they were needed for drainage.

[57] If the Board approves the landscaping condition, then the conditions will start running into each other. Further, the height of the sign is not impacting landscaping, so the conditions should not be imposed.

[58] A Sign that is a Permitted Use which requires variances does not turn into a Discretionary Use. Rather, the Board's discretion comes into play when considering whether or not the Section 687 test has been met.

[59] The dimension "TBD" can be calculated from the engineering drawings.

[60] Pedestrians will not be located at the intersection of 137 Avenue and 97 Street. However, the Sign could be observed from the interior of the sign.



**Decision**

[61] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

- 1) This approval is based on the revised plan submitted and reviewed by the Board. Sign 2 located in the southeast corner of the Site at the intersection of 97 Street and 137 Avenue NW shall have an overall width of 12.93 metres (42 feet 5 inches).
- 2) The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens (Section 59.2(4))

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

- 1) The maximum allowable Freestanding Sign Height of 6.0 metres per Section 940.6(5)(q)(i) is varied to allow an excess of 1.5 metres, thereby increasing the maximum allowable Freestanding Sign Height to 7.5 metres for Sign 1.

**Reasons for Decision**

[62] Section 940.6(3)(w) states a Freestanding On-premises Sign is a Permitted Use in the GVC Griesbach Village Centre Zone. The proposed development is for two Freestanding On-premises Signs, Sign 1 and Sign 2.

[63] The Court of Appeal in *Newcastle* confirmed that the test for the SDAB to consider when granting a variance is set out in Section 687(3)(d) of the *Municipal Government Act*, which provides (in part) that (i) the proposed development would 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.

[64] The Board finds in this case that proposed Sign 1, requires a variance of 1.5 metres in Height which does not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land given the overall dimensions of the Sign 1 which are well under the maximum allowable Sign Area; the fact the Sign is located on the outside perimeter of the site next to a major arterial roadway; and the site itself is surrounded by several other large scale commercial developments.

[65] The Board accepts the submission from both parties that there is an approved landscaping plan for the site and specifically from the Appellant that an approval of this Development Permit would not deviate from that approved plan.

[66] Further, the Board accepts the submission of the Appellant that if a variance is required for an otherwise compliant Permitted Use, this fact does not transform the development application into one for a Discretionary Use thereby expanding the Board's authority to impose conditions unrelated to the Height variance regarding tree retention.

[67] The Board accepts the submission from both parties and on the basis of Section 15 of the Edmonton Zoning Bylaw that proposed Sign 2, located in the southeast corner of the intersection of 97 Street and 137 Avenue NW, is a Permitted Use with no variances and thus no conditions can attach other than those the Applicant would have to comply with in any event.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board members: Ms. K. Cherniawsky, Ms. K. Thind, Mr. M. Jummun, Mr. R. Hobson

Enclosure

**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*, 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.*



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**SDAB-D-16-147**

Project Number: 181620670-002

An appeal by Kouame Georges N'Dri to operate a Minor Home Based Business (administrative office for a delivery business), located at 15331 – 70 Street NW was **WITHDRAWN**.