



EDMONTON
TRIBUNALS

*Subdivision &
Development
Appeal Board*

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SDAB-S-17-004

Application No. 243697639-001

An appeal to Create one (1) additional single detached residential lot located at 6404 - 159 Avenue NW was **WITHDRAWN**.



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Date: July 13, 2017
Project Number: 221153356-004
File Number: SDAB-D-17-115

Notice of Decision

- [1] On June 28, 2017, the Subdivision and Development Appeal Board (the “SDAB”) heard an appeal that was filed on May 31, 2017. The appeal concerned the decision of the Development Authority, issued on May 19, 2017, to refuse the following development:

Construct a Semi-detached House with rear attached Garages, front uncovered decks (1.2m X 2.24m), and roof terraces

- [2] The subject property is on Plan 4590W Blk 141 Lots 1-2, located at 10034 - 142 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the permit application with attachments, refused plans, and refused permit;
 - Appellant’s reasons for appeal, results of community consultation, and correspondence with the Development Authority;
 - Development Officer’s written submissions; and
 - One online response from an affected property owner in opposition to the development, with accompanying email and letter, and written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing Ms. C. Van Tighem disclosed that she was acquainted with Ms. C. Haraba, legal counsel for an affected property owner. The Presiding Officer confirmed with all 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.

- [7] Mr. Lalsin of Lombard Development Inc. (“Lombard”) referred to the submission from Ms. Harabo, legal counsel for neighbouring property owners residing at 10040 – 142 Street. Lombard had only received Ms. Harabo’s submission within the 12 hours prior to the appeal hearing. This late submission did not allow time for a proper review.
- [8] The Chair explained that there are no set submission timelines required by either the *Municipal Government Act* or the SDAB Bylaw. However, Lombard could request that the Board grant an adjournment. Mr. Lalsin declined the opportunity to request an adjournment and stated he wished to proceed with the hearing.
- [9] Lombard also submitted there was a conflict of interest created by Ms. Haraba acting as legal counsel to one of the affected property owners when she is also President of the Community League. Her submission should therefore be excluded from the evidence.
- [10] The Chair clarified that under section 629 of the *Municipal Government Act*, the Board is not bound by strict rules of evidence. The Board may therefore choose to accept any oral or written evidence that it considers proper. However, though the Board may admit and hear such evidence, it will determine how much weight to give to each piece of evidence when making its decision.
- [11] In the case before this Board, the focus is on whether or not the variances should be granted as per section 687 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Appellant, Lombard Development Inc.

- [12] The Appellant was represented by Mr. L. Lalsin, President of Lombard Development Inc. (“Lombard”) and Mr. J. Tereszczenko, his technical advisor. Mr. J. Pow was also present as an observer.
- [13] Mr. Lalsin and Mr. Tereszczenko have been with Lombard for the past 40 years and Mr. Tereszczenko has been a registered member of the Alberta Association of Architects for 57 years. Lombard has had positive dealings with the City for over 35 years with a focus on infill development and increasing density.
- [14] They propose to create a Semi-detached Housing development in the existing RF1 Single Detached Residential Zone and to provide parking for each unit by providing rear attached garages. An easement running north / south along the back property line will accommodate the driveways and will allow plenty of room for parking and access to both garages. The garages are under the second floor of the development and would be accessed from the lane.

- [15] They have been working with the Sustainable Development Department for the past eight months, have made all requested revisions and the permit was still refused. Their past experience is that a decision of refusal would have been made within 30 days. They have lost much time due to the back and forth correspondence with Sustainable Development and the difficulty getting in touch with the Community League.
- [16] The only variances they were aware of during the discussions related to deficiencies in the Front and Rear Setbacks, and the proposed rear attached garages. The issue about the subject property being located on an Interior Site never came up during these preliminary discussions with Sustainable Development. While the subject property does not meet the definition of a Corner Site as defined by the *Edmonton Zoning Bylaw*, it should be treated as such because of the unusual situation.
- [17] The Appellant explained that they do not wish to build garages along the fence because adjacent skinny houses are being built with garages right along the lane. Adding more detached garages along the fence would increase the fire danger due to the combustible material. In addition, the rear lane is very busy with direct access to 142 Street. The proposed plans would actually increase safety in this area.
- [18] They do not believe the required variance to the Front Setback is an issue as 142 Street is very busy and the occupants of the proposed development are not likely to use the Front Yard as an Amenity Area. They are providing a Rooftop Terrace and a beautifully landscaped backyard, including shrubs along the fence and a cobblestone look patio instead. The reduced Front Setback has no effect on the neighbours and the required setback of 9.2 metres is excessive and unnecessary.
- [19] During the initial stages of the development review, Lombard was informed by the Development Authority that there are proposed amendments to the *Edmonton Zoning Bylaw* which would relax the size of the required Front Setback for future developments. They were aware that the Rear Setback was a couple of metres short but feel the required variance would not pose a hardship to anyone in the area.
- [20] They were not aware of the Stepback requirements for Rooftop Terraces until recently and have revised their drawings on several occasions after consulting with the Development Authority. They do not have an issue with further reducing the Stepbacks to completely eliminate the requirement for a variance.
- [21] There could be different owners for the two units although the development would not be set up as a condominium. An agreement will be filed at Land Titles, which would create an easement that would provide unobstructed access for the owners of each dwelling to enter their garages.
- [22] The Chair referred the Appellant to the five requested conditions on Page 15 of Ms. Haraba's submission should the proposed development be approved. The Appellant confirmed there are no objections to the conditions and most of them are already included in the drawings.

- [23] While both units currently look identical from the front, a unique architectural design is planned for each dwelling. They will take the time to finalize the design details after the Development Permit has been granted and during the Building Codes review stage. They have demonstrated their willingness to make design revisions during the last eight months of cooperating with Sustainable Development.
- [24] The Rooftop Terraces will have little impact on the neighbours to the north as there is a very large tree providing privacy and the Appellant will also plant additional columnar aspens. They plan to incorporate privacy windows and screening to further mitigate any privacy issues. The new skinny homes to the west are already impacting the privacy of Ms. Haraba's clients.
- [25] Mr. Lalsin did not encounter any negative responses during the neighbourhood consultation process and was not aware that Ms. Haraba's clients were in opposition to the proposed development until recently. He had met with them on several occasions and they wrote a nice note regarding the development. He feels they must have had a change of heart and understands they are sentimental about the area they have lived in for 40 years. However, what worked 40 or 50 years ago does not work today.
- [26] The Appellant referred to several comparable developments within walking distance that were built either right on the property line or within 1.5 metres of it, and must have had variances granted to the required Front Setback.
- [27] The proposed development has been designed to solve the problems associated with developing on this Site, and the neighbours immediately to the south fully support this project. When Lombard purchased the land there was an old house on the Site, occupied by vagrants. Lombard has spent a considerable amount of money to demolish the old home and clean up the Site.
- [28] Mr. Lalsin acknowledged there would not be an access problem with the Site if the proposed development was a Single Detached House.

ii) *Position of the Development Officer, Mr. J. Angeles*

- [29] Mr. Angeles explained the calculation he used to determine the required 9.2 metre Front Setback which is based on the average Setback of all units on the blockface. While there are proposed amendments to the *Edmonton Zoning Bylaw*, the third reading will not be until October. The Development Officer has to apply the current zoning bylaw when reviewing development applications, not potential future regulations.
- [30] There is nothing in the *Edmonton Zoning Bylaw* stating that a required Amenity Area must be at ground level rather than on the rooftop. The Applicant did not provide any at-Grade Amenity Area because a portion of the lot must be used for the proposed Driveway.

- [31] Revised drawings have been submitted and the deficiency on the Rooftop Terrace Stepback is now only 0.17 metres on each side. The use of proper landscaping such as potted plants and trees will help reduce overlook issues into adjacent lots.
- [32] Any changes made that would alter the appearance of the building would require a separate permit. Mr. Angeles recommended that there be some articulation in materials on the front elevation and some distinction in the roof line. A separate front elevation drawing has not been provided by Lombard.
- [33] He confirmed that this is not a Corner Site as it is not located at the intersection of two public roads. It is located at the intersection of a lane and a public road and is therefore considered an Interior Site under the *Edmonton Zoning Bylaw*. He does not believe this location creates a hardship.
- [34] There is nothing in the *Edmonton Zoning Bylaw* requiring a Semi-detached House with an easement to be on two separate sites. If the applicant applies for the development as one Site, Sustainable Development will review the application on that basis.
- [35] The parking requirement of two parking spaces per Dwelling has been met. The owner of the north unit could have difficulty accessing his Garage if the owner of the south unit parks on the Driveway, but should a conflict arise, it should be dealt with as a civil matter rather than before this Board.
- [36] Mr. Angeles would be in favour of including the conditions proposed by Ms. Haraba on page 15 of her written submissions should the Board approve this development.
- [37] Two detached two-car Garages facing the lane would be too wide. The Applicants have designed a layout that will work for this Site.

iii) Position of Affected Property Owners Opposed to the Development

- [38] Ms. C. Haraba appeared on behalf of the property owners of 10040 – 142 Street. She was not able to provide her submission earlier as she was retained at the last minute. However, in her view, the submission is very readable with much white space and many photos.
- [39] She does not believe she is in a conflict of interest position as she is an officer of the court and is permitted to represent people. She would be in a position of conflict if she had previously acted on behalf of the Appellant, as she would then have privileged information about the Appellant. Such is not the case before this Board.
- [40] The Appellant has raised no evidence to demonstrate to the Board that granting the required variances would not violate section 687 of the *Municipal Government Act*. The proposed development will unduly interfere with the amenities of the neighbourhood and

will materially interfere with or affect the use, enjoyment or value of her client's property. 10040 – 142 Street is the only property in the vicinity that would be affected by this development.

- [41] It is important that all architectural features of the proposed development be included at the time of the Development Permit application. What is before the Board today is the evidence on which the Applicant wants the permit issued, and should include information about architectural features. The Building Permit stage deals with Building Code matters, not architectural design.
- [42] The skinny house abutting her clients' property has not had any impact on their privacy. She referred to a photo in her submission showing that this skinny house has been designed with only one high transom window on the wall abutting her client's property, which prevents overlook.
- [43] The proposed changes to the Mature Neighbourhood Overlay coming into effect in September do not specifically allow for a lesser Front Setback and will require consideration of the abutting lot averages.
- [44] Referencing Fred Laux, she stated that if the development is simply too much for the Site, the Board must refuse it even if it is a Class A development. The proposed development is a Class B development. The Appellant stated that the way the Driveways are configured has solved the problem on the Site, but the problem exists only because of the excessive size of the proposed development.
- [45] Referencing Fred Laux, she submitted that the Board can grant variances due to a hardship or uniqueness associated with the property. Hardship is a test of the Development Officer and he has already stated that there is no hardship associated with this property.

Front Setback Variance

- [46] The proposed development has an unwelcoming bank of railings blocking the front doors and was designed this way because of the reduced Front Setback. The front porch stairs should be open to the public sidewalk to improve the streetscape.
- [47] The purpose of the Mature Neighbourhood Overlay is to maintain the traditional character and pedestrian friendly design of the neighbourhood. She referred to the photo of her client's front porch in her submission which is an example of these characteristics. The bank of railings on the proposed development can be said to interfere with the amenities of the neighbourhood. While 142 Street is very busy it is still a walkable street and aesthetics must be maintained.
- [48] The Appellant has referred to other projects in the immediate vicinity which have been granted a reduced Front Setback but no specific information as to location and reason for the variances has been provided.

Rear Setback Variance

- [49] No facts have been provided to show why the reduced Rear Setback should be allowed other than it is required to allow for the Rear Attached Garages.
- [50] The proposed development is already creating a massing problem and the reduced setback would cause a shading problem for her clients' garden. She referred the Board to the lower photo on Page 20 of her materials. The brown fence in the photo is where the wall of the new development would be.
- [51] The reductions in both the front and rear setbacks could mean that there is now an excess in total permitted site coverage and possibly a required variance that was missed.

Rear Attached Garages

- [52] The Development Officer has determined the design will work but no evidence has been raised to show the proposed garages will not have a negative impact on the neighbourhood.
- [53] No evidence has been presented to show that the proposed design will increase safety and will improve practicality and aesthetics.

Rooftop Terrace Stepbacks

- [54] The variance required for the Rooftop Terrace Stepbacks is confusing and it appears the Development Officer is also having trouble reading the plans. It was stated that revised plans have been submitted and only a 17 centimetre deficiency remains. However, Ms. Haraba questions why this deficiency could not be eliminated completely.
- [55] The Rooftop Terraces are a critical point of contention. Her clients have a beautiful setup and none of the other new developments in the area currently overlook their yard. The regulations contained in sections 49 and 61 of the *Edmonton Zoning Bylaw* regarding Privacy Screening and Rooftop Terraces should be upheld to ensure her clients are not overly imposed upon.
- [56] Potted plants on the Rooftop Terrace would not provide any privacy screening and her clients would like to see something more substantial such as translucent glass should this development be approved.
- [57] Ms. Haraba is asking that the Board uphold the Development Officer's decision of refusal. Should the Board find sufficient reasons to grant the appeal she requests that the conditions proposed on Page 15 or her written submission be added to the permit.

iv) Rebuttal of the Appellant

- [58] Eliminating the remaining 17 centimetre deficiency in the Rooftop Terrace Stepback is not a problem.
- [59] Mr. Lalsin referred to the photo at the top of page 16 of Ms. Haraba's submission. Her clients' yard will always be basking in shadow after about 2:00 p.m. or 2:30 p.m. regardless of whether the proposed development goes ahead or not. His company is always considering sunlight and greenery. The requested eight foot variance to the rear setback will have no effect on the neighbouring property whatsoever.
- [60] This property is within a redeveloping area and is the only original house left. He has personally met several times with these owners and has provided them with suggestions as to what they can do with their own property. They never gave him any indication that they were opposed to the proposed development.
- [61] Lombard is proposing a first class development for the subject site which is well suited for this area which is focused on rapid transit and multi-family dwellings.

Decision

- [62] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [63] Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [64] In order to grant a permit the Board would have to be satisfied that this proposed site Use would not be incompatible with existing Uses. In addition, the Board would have to grant several variances of regulations in the Mature Neighbourhood Overlay to grant the permit in the event the Board found that the Discretionary Use should be allowed.
- [65] The Board is of the opinion that the variance to the regulation prohibiting rear attached garages and the variance to the 40% rear yard setback should not be allowed. The reasons for the Board denying these two variance requests are as follows:
- a) This Board has granted variances allowing rear yard setbacks in situations where the development is done in such a fashion to reduce the massing effect caused by having the rear attached garage and in a situation where the lot is large enough to still allow a significant Amenity Area with landscaping that is characteristic of the neighbourhood. Neither of these situations is present here.

- b) The rear attached garages are on the first floor with a second floor above the rear attached garages. The south and north facing elevations cause a massing effect that will negatively affect in a material way the property immediately to the north of the subject site (whose occupants appeared to oppose this development) as well as to the lane to the south meaning that the massing effect will be visible to all residents of the neighbourhood that traverse the alley to the south.
- c) The request for a variance is not just for one but for two rear attached garages which, when properly serviced by the necessarily large driveway that will be required to make the two rear attached garages functional, eliminate all Amenity Areas on the site other than a small Amenity Area perched on the top of the building. This is not characteristic of the neighbourhood. This reduces the vegetation that can be planted in the back yard and as a result the Board declines to grant either of these two variances.

[66] Given that the Board declines to grant these two variances it is not necessary to discuss other requested variances as the development cannot proceed without these two variances. For the above stated reasons, the appeal is denied and the decision of the Development Authority is confirmed.

Ian Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. W. Tuttle; Mr. A. Peterson; Ms. C. VanTighem; Mr. A. Bolstad

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 13, 2017
Project Number: 231903171-001
File Number: SDAB-D-17-116

Notice of Decision

[1] On June 28, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on May 31, 2017. The appeal concerned the decision of the Development Authority, issued on May 18, 2017, to refuse the following development:

Install (1) Freestanding Minor Digital On-premises Off-premises Signs
(6.1 m x 3 m Digital Panel & 6.1 m x 1.09 m Vet Emerg Channel Letters)

[2] The subject property is on Plan 158RS Blk 35 Lot 27, located at 12831 - 97 Street NW, within the CSC Shopping Centre Zone.

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

- Copy of the permit application with attachments, revised application, and refused permit;
- Appellant One's reasons for appeal, updated written submissions and supporting materials, including a traffic map;
- Appellant Two's written submissions and supporting materials, including a 2014 document from Transportation Operations; and
- Development Officer's written submissions, with five correspondences from Transportation Planning and Engineering.

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

- Exhibit A – Copy of plans associated with Permit 118028022, approved on Jan 25, 2012
- Exhibit B – Diagram of Clearance Zones (Cone of Vision) for Major Digital Display Installations

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.

Summary of Hearing

i) Position of Appellant One, 1994349 Alberta Ltd. (Reverberate Outdoor)

- [8] Appellant One was represented by Mr. R. Nissen and Mr. D. Mitchell.
- [9] Reverberate Outdoor (“Reverberate”) is a small company, and this Sign is the company’s first large Sign development. Consequently, they were somewhat inexperienced with respect to the requirements and regulations.
- [10] The existing Sign pole was installed by the previous Sign company, Icewerx, which held a five year permit and operated the Sign without any complaints. When Reverberate took over the lease from Icewerx and started the application process for the subject Sign under appeal, it was discovered that Icewerx had installed the pole in the wrong location, resulting in an encroachment onto City property.
- [11] The Development Officer’s reasons for refusing the proposed Sign cited negative impact upon neighbouring residential properties, setback deficiencies and sign area excess. In Reverberate’s view, the variances are minor when the neighbourhood context is taken into account. The proposed Sign is located along 97 Street, which experiences traffic flow of up to 50,000 vehicles per day. A recent decision of this Board approved a Digital Sign further south of the subject property, also along 97 Street. It was therefore the Appellant’s position that the proposed development is reasonably compatible with the surrounding area.
- [12] Only one neighbour submitted comments in opposition to the development. This neighbour is located at the edge of the 60 metre notification area to the north, and only a small portion of the Sign is visible from her property as there are other structures blocking the way. They are prepared to purchase blinds that will mitigate the potential impact on her.

- [13] The Appellant also acknowledged that prior to the Sign being approved, the Sign had been switched on at a setting that was too bright, which likely exacerbated this neighbour's concerns. Dimming the Sign to an appropriate level will mitigate her concerns.
- [14] It is not unexpected that someone purchasing a property on 97 Street would anticipate some degree of noise and lighting. It is not unprecedented for a digital sign on a busy street to have indirect exposure to neighbouring properties. In addition, the existing Sign that had been operated by Icewerx did not receive any complaints for the five years that it had been operating.
- [15] Upon questioning by the Board, the Appellant explained that only property owners within the 60 metre notification area were consulted. Referencing Figure 4 in Tab 10 of the Appellant's submissions, the Appellant identified landmarks to the west of the subject property, including a parking lot, some greenspace, and an apartment building. The Appellant was not aware of any complaints from property owners of that building. Given the direction that the Sign faces, the Appellant submitted that the building occupants would be unlikely to have complaints, as the Sign is like a television, with maximum brightness levels only when looking directly at the Sign. At off-angles, the viewer may not even be able to see that the Sign is on. The Sign also has technology that enables the brightness to be set automatically based on ambient lighting, or manually controlled from a remote location.
- [16] Due to the way 97 Street is designed, the subject property is set further back from the main drag of 97 Street than other properties along this road, which is likely why Icewerx installed the Sign at its current location. The Sign is located as far as possible from nearby residential properties.
- [17] The Appellant has been working with Transportation, and it is their understanding that the permit could be allowed so long as the landlord is willing to purchase the portion of land along 97 Street that would solve the encroachment issue.
- [18] However, the Appellant's preference is to not have to purchase the land. Alternatively, the Appellant would be prepared to lease the land from the City. Referencing 2014 Transportation Operations agreement, the Appellant noted that the City was previously prepared to sign a Licence of Operation agreement with the landlord. This agreement was never signed or executed.
- [19] Upon questioning by the Board, the Appellant acknowledged the concerns of Transportation Planning and Engineering with respect to the Sign being located within the blue cone of vision. However, the Sign is actually located at the cusp of this blue zone. The result is that in practical terms, the Sign is not actually visible from the intersection of 127 Avenue and 97 Street. Referencing Tab 5 of the Appellant's supporting materials, the Appellant noted that the traffic safety data indicates no increase in motor vehicle accidents during the time that this Sign has been operating.

- [20] The Board drew attention to the December 13, 2016 email from Transportation Planning and Engineering, requesting that the Sign be relocated outside the blue cone of vision. It was the Appellant's understanding that the blue cone of vision is not a bright line rule – that is, notwithstanding the location of the sign within this blue zone, Transportation Planning and Engineering may still consider an exception to this rule so long as there is justification. In this case, the existing traffic safety data is justification for making an exception.
- [21] The Appellant acknowledged that the Sign Area is slightly over the maximum allowable, due in part to the top channel letters advertising the veterinary clinic. These sign letters are important because they increase visibility of the veterinary clinic, one of the few emergency veterinary clinics in the city.
- [22] Ideally, the Appellant would like the permit granted without restrictions, but if necessary, they would be prepared to consider several restrictions, including the following:
- a) Conditional upon signing of a Licence of Occupation agreement with the City, or alternatively, the purchase of the 0.6 metre strip of land along 97 Street which would remove the encroachment;
 - b) Purchase effective louvre blinds for the single complainant; and/or
 - c) Turn off the north-facing portion of sign between 10 p.m. and 6 a.m. to minimize impact upon residents to the north.
- [23] The Appellant noted that the Board recently allowed a Digital Sign requiring that it be dimmed below 150 nits between 10:00 p.m. and 2:00 a.m., and turned off completely between 2:00 a.m. to 6:00 a.m.
- [24] The Appellant expressed concern that if the permit is not approved by the Board, another applicant might apply during the six month window following the Board's refusal, as there are no other Off-Premises Signs within 250 metres of the subject.
- ii) Position of Appellant Two, M. Abdellatif and A. Abouisamra*
- [25] Appellant Two appeared on behalf of the landlord and the veterinary clinic.
- [26] The veterinary clinic provides critical and emergency care, and there are no other emergency clinics to the north of the subject clinic. The only other emergency clinic is located in south Edmonton. The channel lettering on top of the Digital Sign is therefore crucial to members of the public who have an injured pet, as every minute is critical.
- [27] Upon questioning by the Board, the Appellant explained that a pylon sign had been considered, but was ultimately not possible. They would also prefer to not purchase the land being encroached upon. If the City's issue with the subject development is the potential safety concerns, those same concerns would remain even if they were to purchase the land. Notwithstanding Transportation Planning and Engineering's concerns

about the cone of vision, the building to the south is actually taller than the subject Sign, and the Sign is therefore not visible when driving north along 97 Street.

- [28] The subject Sign has been operating for four to five years without complaints. It was not until recently, when an employee energized the Sign at a setting that was excessively bright, that a complaint was lodged. The brightness has since been corrected, and that employee is no longer with the company. Finally, there are signs further north which are located closer to 97 Street. Upon questioning by the Board about these signs, the Appellant was unable to confirm precisely how many of these Signs were approved Digital Signs.
- [29] Upon questioning by the Board about land uses located north and south of the subject Site, the Appellant explained that those lands are used by the public for parking. The veterinary clinic has its own on-site parking located on the northern portion of the Site.
- [30] Referencing the notification map, the Board noted what appeared to be a smaller service road off of 97 Street. The Appellant confirmed that it is precisely this service road which has resulted in the subject Site being set further back than the neighbouring properties.

iii) Position of the Development Authority

- [31] The Development Authority was represented by Mr. S. Ahuja. He was accompanied by Mr. A. Alou, Transportation Engineer with Planning Coordination.
- [32] They confirmed that the previous permit approved a Sign to be installed six metres from the property line. However, the previous sign company installed the Sign contrary to the approved permit, resulting in the encroachment onto the City right of way.
- [33] Mr. Alou explained that part of his review required coordination with various departments within the City, including Road Right of Way Management, City Operations and Law Branch. Following these discussions, it came to light that the Sign encroaches by 0.59 metres, and that the City was no longer prepared to entertain a Licence of Operation agreement due to the City's current stance with respect to long term uses. Rather, the Appellant would now be required to purchase the portion of land that is being encroached upon. Alternatively, the Appellant may relocate the Sign 0.6 metres to the east, which would eliminate the encroachment.
- [34] Regarding the Sign's impact upon driver distraction, Mr. Alou explained that following discussions with the Applicant, many of Transportation's initial concerns were addressed. However, the encroachment issue cannot be overlooked. The requirement for a 30 second hold time on the Digital Sign advertisements was also required. A six second hold was not acceptable due to the Sign being located within the blue cone of vision, an area that has been statistically proven to have an impact upon drivers. 97 Street also serves up to 50,000 cars per day, and the 30 second hold time was viewed as beneficial for minimizing driver distraction on this busy road.

- [35] Upon questioning by the Board, Mr. Alou explained that the cone of vision starts as a triangle, but in accordance with the standard guidelines from Transportation Canada, this cone of vision expands into a rectangular shape. On the diagram submitted by the City, it appears that the triangular portion has been separated from the rectangular portion of the cone of vision at the intersection of 128 Avenue and 97 Street. He clarified that the “bottom” triangular portion of the cone of vision should have been raised so that it is contiguous with the “top” rectangular portion.
- [36] The Board questioned whether the Applicant could simply move the Sign Face so that it no longer encroaches. The City stated that the Applicant would need to ensure that the Sign remains structurally feasible. Notwithstanding, the condition that Sign advertisements have a 30 second hold time remains. However, should the Sign be set further back and out of the blue cone of vision, a six second hold time may be acceptable.
- [37] The City confirmed that the Sign is not currently operating, and that should the land that is being encroached upon be sold, it would likely be at market value, not a nominal fee.

iv) Rebuttal of Appellant One

- [38] Appellant One confirmed that the land would be purchased from the City at market value, and that the subject Sign is not currently operating. They would be amenable to purchasing the land as a condition of an approved permit, though they would have preferred the permit to be granted as-is or conditional upon execution of a Licence of Operation agreement.
- [39] Regarding the potential traffic safety concerns, Appellant One referenced Tab 5 of their materials, noting that there does not appear to be an increase in accidents from 2012, the year in which the original permit was approved. Indeed, it appears that the number of traffic accidents have decreased.

v) Rebuttal of Appellant Two

- [40] Appellant Two concurred with Appellant One with respect to the land purchase.
- [41] Regarding the City’s proposed alternative option that the Sign be moved further back to eliminate the encroachment issue, Appellant Two stated that this was not feasible for previously cited reasons. Furthermore, moving the Sign away from 97 Street would bring it closer to the nearby residential area.
- [42] They reiterated that the Sign is not visible when driving northbound along 97 Street. It is only after the driver passes the mechanic shop located just south of the subject property that the Sign becomes visible.

Decision

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

- 1) The granting of this permit is conditional upon the Applicant reaching an agreement with the City of Edmonton for the purchase of the portion of the City of Edmonton's lands immediately to the west of the subject Site sufficient to remove any encroachment of the proposed Sign upon City lands.
- 2) The subject Minor Digital On-premises Off-premises permit is approved for a period of up to five years from the satisfaction of Condition One, above.
- 3) The proposed Freestanding Minor Digital On-premises Off-premises shall comply with the approved plans submitted.
- 4) The proposed Freestanding Minor Digital Off-premises Sign shall be dimmed to 150 nits from 10:00 p.m. to 2:00 a.m., and de-energized from 2:00 a.m. to 6:00 a.m.
- 5) Minor Digital Off-premises Signs shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution, in accordance with the following:
 - a) 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 footcandles 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))
 - b) Subject to specific provisions of condition 3, which shall prevail, the 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))
- 6) The proposed Freestanding Minor Digital Off-Premises Sign shall comply with the following conditions in consultation with Transportation Planning, in accordance with Section 59.2(11):
 - a) That, should at any time, Transportation Planning and Engineering 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 Transportation Planning and Engineering.

- b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering 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.

ADVISEMENTS:

- 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, Transportation Services will require a safety review of the sign prior to responding to the application.
- 2) An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2).

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

- 1) Section 59.2(12) is varied to permit a Setback deficiency of 6.0 metres, for a total Setback of 0.0 metres.
- 2) Section 59E.3(5)(c)(ii) is varied by 4.5 square metres for a total Sign Area of 24.5 square metres (Digital Sign Area: 18.6 square metres; Channel Letters: 5.9 square metres).
- 3) No variance is required to Sign illumination regulations under section 59.2(3), for reasons that follow.

Reasons for Decision

[45] Minor Digital On-premises Off-premises Signs are a Discretionary Use in the CSC Shopping Centre Zone.

[46] The Sign that is currently present has been in operation for approximately five years, and was the subject of a permit granted by the City of Edmonton in June 2012.

- [47] During the application process for this development, it was discovered that the previous owner and previous tenant of the subject Site, after obtaining the 2012 permit, did not in fact construct the Sign in accordance with the approved permit. In fact, the Sign was built at a different location altogether.
- [48] The current Sign as proposed, not only has a 0.0 metre Setback from the property line, but encroaches upon land owned by the City of Edmonton by 0.51 metres. Had the Sign that was the subject of the 2012 permit been built in the location stipulated in that permit, the current proposal would not have any issues with encroaching upon City of Edmonton land.
- [49] The City of Edmonton, in its submissions to the Board, indicated that it was not willing to enter into a Licence of Operation agreement with the current owner of the subject Site. However, the City's evidence was that it was prepared, subject to any administrative proceeding, to sell to the current owners of the subject Site the portion of land that would be necessary to remove the encroachment. The Board has dealt with this problem by way of Condition One. This permit is conditional upon that sale being executed, thus eliminating the encroachment.
- [50] The second issue to be dealt with was the application of section 59.2(3), which states:
- Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be located or constructed such that Sign illumination shall not project onto any surrounding residential premises, shall not face an abutting or adjacent Residential Use, shall not face an abutting or adjacent Residential-Related Use, and shall not face the Extended Medical Treatment Services Use to the satisfaction of the Development Officer.
- [51] In the refusal issued by the Development Authority, the second paragraph states:
- The proposed Freestanding Minor Digital On-premises Off-premises Sign does not directly face residential use class but sign illumination projecting onto adjacent residential use class interferes with the use, enjoyment or value of neighbouring residential use class contrary to section 59.2(3).
- [52] The Board has placed strict conditions upon this permit, namely:
- a) The Sign shall be reduced to 150 nits from the hours of 10:00 p.m. to 2:00 a.m., which will significantly reduce the amount of light that will project onto adjacent residential use classes; and
 - b) The condition requires the Sign to be turned off between the hours of 2:00 a.m. and 6:00 a.m.

- [53] As a result, the Board is satisfied that with these reductions in both hours of operation and illumination levels, the Sign will not be in contravention of section 59.2(3), nor will it unduly interfere with the use, value or enjoyment of neighbouring residential use classes. The Board notes that there was support for the proposed development by most of the residents of the adjacent residential use class, including those residents who would be closest to the subject Sign.
- [54] The remaining matter is the issue of the two remaining variances that were granted by this Board, dealing with the Setback and maximum area of the Sign. These variances have been granted for the following reasons:
- a) While the Sign is not properly set back from the property line, the Board notes that at the location of the subject Site, there is a large right of way that greatly increases the distance from the operational part of 97 Street to the property line of the subject Site.
 - b) The land immediately to the south of the subject Site has a property line which is significantly closer to 97 Street. As a result, for those motorists travelling on 97 Street, the subject Sign has the appearance of being set back further from the road than is actually the case.
 - c) Due to the existence of this right of way between the Sign and 97 Street, the lack of a Setback and the extra 4.5 square metres of Sign area are not noticeable, and therefore 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.
 - d) The Board also notes significant neighbourhood support for the development, which is particularly probative given that a Digital Sign has been operating at that exact location for five years.
- [55] For the above reasons, the Board allows the appeal.

Ian Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. W. Tuttle; Mr. A. Peterson; Ms. C. VanTighem; Mr. A. Bolstad

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.