



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: June 22, 2017
Project Number: 245152848-001
File Number: SDAB-D-17-101

Notice of Decision

- [1] On June 7, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 13, 2017**. The appeal concerned the decision of the Development Authority, issued on May 8, 2017, to refuse the following development:

Construct 1 Minor Digital Off-premises Sign (Capital Hill Dental).

- [2] The subject property is on Plan 3669HW Blk 130 Lot 16, located at 14109 - Stony Plain Road NW, within the (CSC) Shopping Centre Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - An e-mail between the Development Officer and the Appellant;
 - An e-mail between the Development Officer and Transportation Services;
 - The Development Officer’s written submission;
 - The Appellant’s written submission; and
 - An e-mail in opposition.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. Donadt, representing Go Outdoor Advertising Ltd.

- [7] The subject site has been vacant for several years.
- [8] The proposed sign will be a v-shaped sign facing east/west, 50 metres south of a mixed use residential development.
- [9] In his opinion, the Development Officer was incorrect when stating that the zoning of the property north of the subject site is residential when it is zoned DC2.
- [10] He referred to photograph #1 of his submission showing a sign with a similar design as the proposed sign. This sign is half the distance from the property line as the proposed sign.
- [11] He conceded that the sign is not perpendicular, but it will not have a negative impact on the surrounding neighbourhood.
- [12] The proposed sign meets the requirements of the *Edmonton Zoning Bylaw* and is allowed in the (CSC) Shopping Centre Zone.
- [13] The maximum sign brightness and illumination controls meet the sign specifications required. No variances are required.
- [14] There are several other signs in the area that are similar to the proposed sign that the City has approved.
- [15] He referred to photographs, pages 2 through 18 of his submission and outlined who owns those signs, where they are located, and the type of property that surrounds them.
- [16] They contacted the contractor of the property north of the subject site by e-mail and provided them with information about the proposed sign. They received a response indicating that the contractor might be interested in advertising on the sign. In his opinion, the proposed sign will not have a negative effect on the property north of the subject site as it will not be developed for some time.
- [17] The proposed sign will not face or illuminate on the property south of the subject site.
- [18] Transportation Services inspected the site and have no objection to the proposed sign.
- [19] With respect to questions from the Board, Mr. Donadt provided the following:
- a. The site immediately east of the subject site does not consist of residential developments. There are some residential developments adjacent to the DC2

property. The maximum height of the proposed sign will be lower than the buildings on the adjacent property.

- b. The property west of the subject site consists of commercial developments.
- c. The sign was re-located on the site plan to be setback 6.0 metres from the north property line.
- d. With regard to the variance required for section 59.2(3) and the projection onto residential neighbourhoods, he stated that the adjacent property to the north will not be developed for some time. The sign will face eastbound and westbound traffic.
- e. Row Housing is a listed use on the property east of the subject site and will be visible to this development. However, the proposed sign will not have a negative impact on that site as the illumination will be set to the lowest setting if there are concerns.
- f. With regard to illumination, he stated that a blinder or louver could be added to the sign to screen light on adjacent properties. However, there will always be some illumination coming from the sign.
- g. There is a lane between the subject site and the property to the east and the proposed sign will be setback 2.0 metres from the east property line.
- h. He confirmed that the illumination of the sign will be controlled and will meet the requirements of the *Edmonton Zoning Bylaw*.
- i. A blinder or louver would block ambient light in certain directions and he would accept this as a condition if the Board were to allow his appeal.
- j. He is agreeable to the conditions suggested by the Development Officer except for condition #3. If the sign has to be de-energized between 10:00 p.m. and 6:00 a.m. that may impact their decision to develop the sign. He would like the sign to run all day.

ii) *Position of the Development Officer, Mr. S. Ahuja*

[20] With respect to questions from the Board, Mr. Ahuja provided the following:

- a. The proposed Sign will be setback 6.0 metres from the north property line.
- b. He confirmed that Transportation Services did not object to the proposed sign.

- c. The sign will change every six seconds; therefore the ambient light will flash each time. Neighbouring properties may not be able to see the entire sign but they will see the ambient light flashing every six seconds.
- d. He could not confirm how much of a blinder or louver would need to be added to the sign to screen the lighting.
- e. The sign will face Stony Plain Road which is a busy arterial road that will have an LRT in the future.

iii) Position of an Affected Property Owner, Ms. S. Kheraj, representing InHouse

- [21] Ms. Kheraj works for InHouse which owns the property north of the subject site and is zoned DC2.
- [22] InHouse is developing the Westblock property at 14101 - Westblock Drive, which will be a Mixed Use Development with a Residential component at the corner of Stony Plain Road and 142 Street.
- [23] InHouse received an e-mail from the site contractor indicating that the Appellant provided them with an e-mail. In her opinion, it was more of a sales e-mail informing them of the proposed sign and that they could advertise on the sign.
- [24] In her opinion, the Appellant should have directly contacted InHouse as owners of the property. Although the site is being developed, it is well advertised as to who to contact regarding the site.
- [25] The Westblock development will consist of 500 residential units and some commercial development which will have On-premises signage as part of their commercial development.
- [26] In her opinion, the proposed sign's size, scale, and illumination will have a negative impact on the adjacent property.
- [27] With respect to questions from the Board, Ms. Kheraj provided the following:
 - a. The light flashing from the sign is a concern and de-energizing the sign during a time period will not address this concern. There are commercial, retail, and office developments adjacent to Stony Plain Road that are open during the evening that will be impacted by the sign.
 - b. The DC2.919 site has a Use Class for Minor Digital On-premises Signs, but they have not yet made an application for a sign but do not intend to install a digital sign. Her main concern is the lighting and illumination of the sign every six seconds.

iv) Rebuttal of the Appellant, Mr. Donadt

- [28] Based on his experience, blinders or louvers are effective to reduce sign illumination.
- [29] The only contact information he had for the Westblock development was for the site contactor and he asked them to pass on the proposed sign information to the property owner. He provided them with the site plan and only mentioned advertising on the sign as they inquired about it.
- [30] With regard to flashing lights from the sign, light from the sign does not flash, the light is a low LED light and is a constant illumination. The sign will not have video, changing, or moving advertisements. There are similar signs across the street from the subject site.

Decision

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

Reasons for Decision

- [32] A Minor Digital Off-premises Sign is a Discretionary Use in the (CSC) Shopping Centre Zone.
- [33] The Board reviewed the two adjacent Sites zoned DC2.919 and DC2.946, and upon review both of those adjacent Sites have provisions for Residential Uses.
- [34] Section 59.2(3) of the *Edmonton Zoning Bylaw* 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.
- [35] The Board accepts the reason for refusal per section 59.2(3) that the close proximity to the (east) property, in particular, and also the (north) and (south) properties will have a negative impact on the adjacent residential development.

- [36] The Board was provided with an on-line response in opposition to the proposed sign and a representative from the property directly north of the subject site appeared in opposition at the hearing.
- [37] The Board did not receive sufficient evidence to reach a conclusion or impose a condition that the installation of a blinder or louver would mitigate the concerns of the neighbours to reduce the illumination of the ambient light. There were no studies provided to determine if a blinder or louvre will work to reduce light illumination on the adjacent Residential Uses.
- [38] The Board was presented with other sign locations in the area; however, the Board is not bound by precedent. Upon review of each of the photographs submitted, the Board could determine that the facts of this application are different and the decision of the Board must deal with the new application itself.
- [39] Based on the evidence provided, the Board agrees with the Development Officer that the proposed sign with the change in Copy every six seconds, which will have a material impact on the Residential Uses in the area.
- [40] Based on the above, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

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.
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.



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P: 780-496-6079 F: 780-577-
3537
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edmontonsdab.ca*

Date: June 22, 2017
Project Number: 241659460-001
File Number: SDAB-D-17-102

Notice of Decision

- [1] On June 7, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 15, 2017**. The appeal concerned the decision of the Development Authority, issued on May 12, 2017, to refuse the following development:

Construct an Accessory Building (7.62m x 9.45m, main floor Garage, Garage Suite on second floor), and to demolish an existing Accessory Building (5.49m x 6.4m).

- [2] The subject property is on Plan 2938HW Blk 10 Lot 7, located at 7318 - 118A Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions; and
- Letters of opposition from three adjacent properties.

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

- Exhibit A – a grade calculation from the Development Officer; and
- Exhibit B – a photograph of the subject site from the Appellant.

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. The Presiding Officer indicated that the Board first required clarification on section 87.2(a) of the *Edmonton Zoning Bylaw* before proceeding with the merits of the appeal.
- [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 the Development Officer, Mr. B. Langille with respect to the Height calculation

- [8] Mr. Langille referred to the elevation drawings and indicated that he used the highest roofline to measure Height. He determined that the highest roofline is a 2/12 pitch, therefore the maximum Height allowed is 5.5 metres per section 87.2(a)(ii) of the *Edmonton Zoning Bylaw*.
- [9] He acknowledged that section 87.2(a)(ii) has been criticized because it deters a flat roof design.
- [10] With respect to questions from the Board, Mr. Langille provided the following:
- a. There is no definition for “Roof Height” in the *Edmonton Zoning Bylaw* but there is for “Height”. When there are multiple rooflines, the Development Authority must make a judgment call on which roofline is used to determine Height. In this case, he determined that the 2/12 pitch was the highest roofline to determine Height.
 - b. He referred to the sectional drawing (Section A-A of the plans) and indicated that he determined Grade by calculating the average elevation of the four corners of the lot. His calculation was submitted as *Exhibit A*.
 - c. Based on his calculation he determined that the Height of the Principal Dwelling is 7.29 metres.

ii) Position of the Appellant, Mr. A. Doige, representing SunnySide Contracting & Design Inc.

- [11] Mr. Doige was not sure whether to make the highest roof line a 2/12 roof pitch or a 7/12 roof pitch. If he knew that the 2/12 roof pitch was going to be deemed as the dominant roof by the Development Officer, he would have considered redesigning the proposed Garage Suite.
- [12] The proposed Garage Suite will be used as an income property or a rental suite.

[13] With respect to questions from the Board, Mr. Doige provided the following:

- a. With regard to why the Board should grant the Height variance, Mr. Doige indicated that the Garage Suite is lower than the Principal Dwelling. The lot slopes downward toward the lane. He submitted a photograph to show the lot Grade difference (*Exhibit B*).
- b. With regard to possibly redesigning the Garage Suite, he preferred the design under appeal.
- c. The dormer that faces the Principal Dwelling has been stepped back further than the adjacent neighbours buildings to mitigate massing. The Rear Setback is 6-feet.

iii) Position of the Development Officer, Mr. Langille

[14] With respect to questions from the Board, Mr. Langille provided the following:

- a. With regard to section 87.2(a), the gable roof provides articulation but the massing is essentially the same. The proposed dormers will not change the Height variance.
- b. The applicant was given the opportunity to revise the drawings, but chose to appeal the decision refusal.
- c. There are other Garage Suites in the area and the proposed development is very compatible with the neighbourhood. Height was the only issue and pursuant to section 11.3(1)(b) he had to refuse the development. The Garage Suite complies with all other *Edmonton Zoning Bylaw* regulations.
- d. To help mitigate any privacy concerns the side windows must be frosted and the applicant agreed to this condition.

iv) Rebuttal of the Appellant, Mr. Doige

[15] Mr. Doige indicated that he has no issues with the Development Authority's conditions.

Decision

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

1. The development shall be constructed in accordance with the stamped and approved drawings.

2. Immediately upon demolition of the building, the site shall be cleared of all debris.
3. An accessory building or structure containing a Garage Suite shall not exceed 6.48 metres in height. (Reference Section 6.1(49) and 87.2(a))
4. Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Reference Section 44.1(b))
5. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
6. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
7. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three.
8. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
9. Frosted or opaque glass treatment shall be used on windows on the red-lined stamped approved elevation plan to minimize overlook. (Reference Section 87.8)

ADVISEMENTS:

1. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
2. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
3. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws/licences/licences_permits/oscam-permit-request.aspx

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

1. Section 87.2(a)(ii) is waived to allow a Height of 6.48 metres.

Reasons for Decision

- [18] The proposed development, a Garage Suite, is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [19] With respect to the Discretionary Use, the Board heard from the Development Authority that Garage Suites are characteristic of the neighbourhood as there are several Garage Suites in close proximity of the proposed development.
- [20] The Board supports the conclusion of the Development Authority and based on photographic evidence, finds that the proposed Garage Suite is reasonably compatible with the neighbourhood.
- [21] With respect to the Height variance and pursuant to section 87.2(a)(ii) of the *Edmonton Zoning Bylaw*, the Board accepts the calculation conducted by the Development Authority that the Height is 6.48 metres. However, upon review of the construction details in the elevation drawings that the overall Height of the Garage Suite is compliant with the maximum Height to the peak of the structure.
- [22] The Development Authority made a determination, which the Board supports, that the 2/12 portion of the roof slope is the dominant feature and therefore the 5.5-metre maximum allowed Height under section 87.2(a)(ii) was used to determine the maximum allowable Height.
- [23] The Board notes that the Height of the Garage Suite is lower than the Principal Dwelling. The Height of the Garage Suite has met this regulation and helps ensure that the proposed Garage Suite does not dominate the site.
- [24] The Board further notes that pursuant to section 87.2(a)(i) where the maximum Height of a Garage is 6.5 metres when the roof slope is over a 4/12 pitch. Some of the roof structure is 7/12 and no matter the size of the 2/12 portion the overall peak would not change and would be compliant with this regulation.
- [25] The Development Officer expressed more of a concern over the massing effect that may be created by the dominate 2/12 roof areas and walls and not the Height variance itself. Based on the drawings and site setbacks the Board finds that the massing will not have an impact on adjacent properties due to the low structures and articulation in the façade and rooflines.
- [26] The Board received three letters in opposition from adjacent property owners. With respect to the property to the south, the proposed stepback of the second storey of the Garage Suite has been stepped back to sufficiently mitigate any massing or overlook concerns. The majority of the south elevation of the proposed development is a single storey structure.

- [27] The side setbacks are in excess of the minimum required from both the south and north properties. Given the increased setbacks the Board has found that this will help mitigate any sun or shadow concerns.
- [28] Further, the proposed Garage Suite meets all of the setbacks and the requirements of the Mature Neighbourhood Overlay.
- [29] The Board notes that notwithstanding the Height variance the physical peak of the 7/12 pitch roof does not change and would conform to the Height calculation regulation. This in combination with the stepback of the second level of the Garage Suite on the south elevation and the increased side setbacks will mitigate any potential sun-shadow effect on abutting properties.
- [30] The Board finds that the dormers break up the massing and are more visually appealing compared to a flat roofline and no articulation.
- [31] Based on the above, the Board finds that the proposed development as set out in section 687(3)(d) of the *Municipal Government Act* 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.

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

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 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.