



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: March 17, 2017  
Project Number: 176858707-014  
File Number: SDAB-D-17-047

**Notice of Decision**

- [1] On March 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 1, 2017**. The appeal concerned the decision of the Development Authority, issued on January 13, 2017, to approve the following development:

**To construct exterior alterations (reduce the size of the parkade and number of parking spaces provided) to an approved Apartment House (four Storey with underground parkade, 36 Dwellings)**

- [2] The subject property is on Plan 1523194 Blk 78 Lot 33, located at 10125 - 84 Avenue NW, within a DC2.922 Site Specific Development Control Provision Zone. The Strathcona Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
  - The Development Officer’s written submissions; and
  - An email from an affected property owner in support of the appeal.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs of the subject site submitted by the Appellant
  - Exhibit B – Written submission from the Appellant
  - Exhibit C – Written submission from Ms. Hameister
  - Exhibit D – Written submission from Ms. Rockwell
  - Exhibit E – Excerpt from DC2.922

**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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).
- [8] The Presiding Officer explained to the parties that this site is zoned DC2 Site Specific Development Control Provision. City Council has taken special control of the site. The Board’s authority is limited under Section 641(4)(b) of the *Municipal Government Act*, which states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district, is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

The Presiding Officer directed all parties to make submissions to the Board with regards to how the Development Officer did or did not follow the directions of Council.

**Summary of Hearing***i) Position of the Appellant, Mr. S. Hesse:*

- [9] Mr. Hesse resides next door to the subject site.
- [10] The Development Authority has relied upon reports from Bunt & Associates and Transportation Services to justify granting a variance in the minimum required number of parking spaces for this four storey Apartment building.
- [11] This development was proposed to the community in August, 2015 and presented to City Council in October 2015 with the provision that the required parking would meet the regulations. At a further community meeting in February 2016 and another meeting with City Council in April 2016 parking was being provided to comply with the requirements. The provision of sufficient parking was used by Sustainable Development as a reason to recommend this development.
- [12] The developer is now claiming that the project requires less parking when it is too late for the community or Council to respond.

- [13] It was his opinion that the Development Officer did not have an adequate reason to grant a variance for this development. The reason used was that reducing the size of the excavation would give the two most southern trees a better chance of survival.
- [14] He referenced a Site Plan and photographs marked Exhibit "A", to illustrate that one of the four trees to be protected, the tree closest to the alley has been cut down by the developer. All three of the remaining trees hug the property line and are very close to the excavation even in the revised parkade plan requiring a variance.
- [15] The location of the trees was accounted for in the original development permit and excavation was shifted away from the east property line to protect the trees.
- [16] The revised parkade plans do not change the excavation near the trees in any way until close to the south end of the site. The Development Officer has stated that allowing this variance only addresses reducing potential harm to the final two trees. A photograph was referenced to illustrate some of the impacts of the excavation on the remaining trees.
- [17] The proposed revision will reduce the excavation and parking from the south side of the development not the east side which is closer to the trees.
- [18] Photographs were referenced to illustrate that all of the trees have been affected by the excavation while only the "final two trees" were considered by the Development Officer.
- [19] It was his opinion that not only the final two trees create a physical restraint resulting in unnecessary hardship and practical difficulty when all of the trees abut the parkade.
- [20] The trees are being used as a reason to justify the parking variance.
- [21] The Bunt & Associates report is dated December 14, 2016, after the developers met with the community and City Council on two different occasions. The report describes the development as near a transit avenue but nothing has changed since 2015 and 2016 when the development was originally proposed.
- [22] Neither the Bunt & Associates report nor the report from Transportation Services provides any justification to grant a variance and as illustrated the fourth tree has been removed from the site.
- [23] Excavation that continues south according to the original development permit will provide the most protection for all of the trees.
- [24] If the developer was truly concerned about preserving the trees, parking would be moved away from the east property line instead of the south property line.
- [25] Preserving two trees when the DC2 required the protection of four trees cannot be used as justification to grant this variance.

[26] The Development Officer did not follow the direction of Council because of his interpretation of variance power.

[27] Mr. Hesse provided a written submission, marked Exhibit "B".

ii) *Position of Affected Property Owners in Support of the Appellant:*

*Ms. Hameister, provided a written submission marked Exhibit "C":*

[28] The reduction in the required number of parking spaces will impact the neighbourhood.

[29] They were always under the assumption that the developer would provide the required number of parking spaces. This is a way for the developer to decrease parking after the fact.

[30] Reducing the parking spaces will result in a higher demand for street parking which will be detrimental to the community. Holy Trinity Church is located in close proximity to the subject site and offers many community activities including Scouts, Girl Guides and exercise classes.

[31] Allowing a variance in parking will set a precedent for other new developments in this neighbourhood.

*Ms. Rockwell, representing the Strathcona Community League, Civics & Planning Committee, provided a written submission marked Exhibit "D":*

[32] All of the parties appearing today are local residents with direct knowledge of the subject site and the proposed development.

[33] On August 20, 2015 City planners and the developer attended a community meeting and heard that parking was a major concern for the community around this particular site. Parking was identified as a major concern and obstacle from the very conception of this development.

[34] The City and the developer promised that parking was not going to be an issue because the required number of parking stalls would be provided.

[35] Parking was never identified as an issue at the subsequent meetings held with the developer and City Council.

[36] The community also expressed concern that the rezoning would allow the construction of apartments instead of townhouses.

- [37] When the original development was appealed in November 2016, it came to the community's attention that 54 parking spaces may not be enough because of the proposed one bedroom units with "dens". It was suggested that additional parking spaces may be required. This alerted the developer and the Development Officer that 54 parking spaces may not be adequate.
- [38] The development permit approved by the City reduces the number of parking spaces by 12 resulting in approval for 42 parking spaces, instead of the promised 54 parking spaces.
- [39] Reducing the required parking goes against the wishes of City Council and neighbourhood residents. It also does not comply with the Area Redevelopment Plan to encourage the provision of adequate accessible parking for new development.
- [40] Ms. Rockwell provided the following responses to questions:
- a) She disagreed with the findings of the Parking Study that adequate street parking is available on 84 Avenue.
  - b) The subject site is located in close proximity to a Church and people attending the church, the Farmers' Market and other community activities park use the street parking on 84 Avenue.
  - c) The subject site is not located near an LRT station and 82 Avenue is two blocks away.
  - d) Promises were made by the developer and City Council that the parking requirements for this development would be met.
  - e) It was their assumption that 54 parking spaces would be provided.

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

- [41] The application proposes to construct exterior alterations (reduce the size of the parkade and number of parking spaces provided) to an approved Apartment House (four-storey with underground parkade, 36 Dwellings).
- [42] Apartment Housing is an allowable Listed Use within the DC2.922 Site Specific Development Control Provision.
- [43] A variance was granted reducing the number of accessory vehicular parking spaces to 42 from the required 54 parking spaces.
- [44] It was his opinion that the requested variance is in keeping with the intentions of City Council as provided in the Direct Control Zone. Section 720.3(3) of the *Edmonton Zoning Bylaw* states that "all regulations in the *Edmonton Zoning Bylaw* shall apply to development in Direct Control Provision, unless such regulations are specifically excluded or modified in the Direct Control Provision".

- [45] Section 54.1 and 54.2, Schedule 1(A), regulates the requirements for accessory vehicular parking for this type of development. The Direct Control Zone does not specifically exclude or modify these regulations.
- [46] Section 54.1(2)(g) states:
- “The Development Officer may use their variance power to relax the vehicular parking requirements in Schedule 1, the Bicycle Parking requirements in Schedule 2 and the loading requirements in Schedule 3, however, such a variance shall only be considered in cases where the nature of the Use, the size of the Site, or other physical constraints result in a situation where the requirements cannot be met on-site without unnecessary or practical difficulties.”
- [47] Section 922.7(a)(v) of the Direct Control Zone requires the protection and retention of four existing trees on site. After the more detailed construction and excavation planning occurred, the project landscape architect found that reducing the size of the parkade excavation would give the two most southern trees located in the southeast corner of the site a better chance of survival because it would have less impact on the root system than the previously approved plan.
- [48] It was therefore his opinion that the requirements of Section 922.7(a)(v) to preserve and protect these trees created a physical constraint because the required number of parking spaces could not be met on the site without unnecessary hardship or practical difficulty. If the trees were damaged or destroyed by excavation the intent of Council in the Direct Control Zone would not be followed. It was his opinion that approving a reduction in the size of the parkade reduced the likelihood of that occurring.
- [49] He was not aware that the fourth tree identified on the original plans had been removed by the developer. Removal of this tree is a violation of the DC2 Zone and does not comply with the intent of City Council or the original approval and the City Enforcement Branch will be asked to inspect the site.
- [50] In addition to considering the practical hardship for the Applicant, he also considered the impact of granting the variance on neighbouring residents and the community.
- [51] Mr. McLellan provided the following responses to questions:
- a) The four trees located on the east side of the property are Manitoba Maples.
  - b) The DC2 regulations outline how the trees are to be protected.
  - c) The proposed revision to the parkade is on the south side of the subject lot.
  - d) This will change the proximity of the parkade wall to the two southernmost trees and provide more protection.
  - e) The proposed reduction in the size of the parkade results in a reduction of 12 parking spaces.
  - f) The Parking Study and the response from Transportation Services support the reduction in parking because of the nature of the development and surrounding area

- as well as close proximity to transit and active modes of infrastructure which will influence transportation activity associated with the development.
- g) A combination of onsite, on-street and other off-site parking spaces are available in the area and are anticipated to be adequate to support the parking demands associated with the proposed development with the reduced number of on-site parking spaces.
  - h) It was his opinion that special event parking cannot be considered because these activities are temporary.
  - i) Transportation Services and the findings of the Parking Study both concur that 54 parking spaces will not be required for the proposed development.
  - j) The proposed “dens” are not considered when calculating the required number of parking spaces.
  - k) Removal of the fourth tree on site is an enforcement issue which is outside the purview of the Board.
  - l) His first consideration was whether or not the direction of Council was followed, second was whether or not there was a physical hardship for the developer and the third consideration was the impact of the proposed development on neighbouring property owners.

*iv) Position of the Respondent, Ms. N. Kilmartin, representing the Respondent, Kennedy:*

- [52] It was the opinion of the project landscape architect that reducing the size of the proposed parkade supports the survivability of the third and fourth trees on the subject site.
- [53] The fourth tree in the southeast corner of the subject site had to be removed to accommodate the installation of a transformer. However, the developer will replace that tree with a large tree that will be planted in a location to support the provision of a landscape buffer on the east property line.
- [54] The proposed revision to the parkade supports the survivability of the three existing trees as well as the new tree that will be planted in the southeast corner of the site.
- [55] A problem came to light during the preparation of the detailed design drawings. Every attempt was made to provide a landscape buffer for privacy and to allow sunlight penetration to neighbouring properties.
- [56] The proposed landscape plan can be enhanced to address the concerns of the Appellant.
- [57] It was her opinion that the required 100 metre distance to a transit avenue is quite limited. There are nine bus stops located within blocks of the subject site and the site is only two blocks north of Whyte Avenue.
- [58] Several studies have been conducted in this neighbourhood and the findings indicate that 42 percent of residents use alternate forms of transportation. The parkades of other new developments in this area are half empty because residents do not require the parking spaces.

- [59] An excerpt from DC2.922, marked Exhibit “E” was referenced to illustrate that the proposed development is proposing seven family oriented units. Even with the proposed reduction in parking, six of those dwellings could have two vehicles.
- [60] People choose to live in this neighbourhood because it is walkable.
- [61] The findings of the Parking Study and Transportation Services were relied on.
- [62] The trees have been shored and boxed based on the advice of the project landscape architect in order to retain a landscape buffer.
- [63] Ms. Kilmartin provided the following information in response to questions:
- a) The proposed revision removes 12 parking spaces by reducing the size of the parkade on the south side of the subject site.
  - b) The site has already been excavated to accommodate the proposed revision.
  - c) The original plan required excavation to the south property line.
  - d) The hardship for the developer to develop the parkade as originally planned is the extra costs associated with the provision of the 12 parking spaces.
  - e) This issue came to light during the preparation of the detailed design drawings which were not completed when the DC2 Zone was approved.
  - f) The tree in the southeast corner of the site was removed to accommodate a transformer but a new tree will be planted with the consultation of a landscape architect.
  - g) The third tree on the east property line has been boxed and shored as per the direction of a landscape architect.
  - h) Eliminating 12 parking spaces on the south side of the parkade has nothing to do with the retention of the trees. She conceded that the same outcome could have been achieved by eliminating two parking spaces on the east side of the proposed parkade.
  - i) No matter which plan is approved, the appearance of the development will not change along the south property line.

v) *Rebuttal of the Appellant*

- [64] From the outset of this development, the developer and the City have always indicated that the parking requirements of the DC2 Zone would be met. The Sustainable Development Department supported the proposed rezoning because the parking requirements of the *Edmonton Zoning Bylaw* had been met.
- [65] He questioned the removal of the fourth tree from the southeast corner of the site because it would have been the tree with the best chance of survival.

## Decision

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



**Reasons for Decision**

- [67] Section 641(4)(b) of the *Municipal Government Act* states, “if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.”
- [68] Section 922.7(a)(v) of the Direct Control Provision requires the protection and retention of four existing trees on site.
- [69] Documentation submitted with the original Development Permit application detailed the methodology and steps taken to preserve the four existing trees on site with the full excavation of the parkade. However, the Respondent determined from more detailed construction and excavation planning that reducing the size of the parkade excavation would give the two trees in the southeast corner of the site a better chance of survival because the parkade excavation would impact root systems less than the original parkade layout. The Development Authority therefore concluded that the requirement of Section 922.7(a)(v) to preserve and protect these trees created a physical constraint to provide the required number of on-site parking spaces and that it could not be met without unnecessary hardship or practical difficulty for the developer.
- [70] The Board notes, based on a review of the photographic evidence provided that the fourth tree, located in the southeast corner of the site, has been removed. However, this matter is outside the purview of the Board. The Development Officer advised that he was not aware that the fourth tree had been removed from the site when reviewing this development permit application. Although the decision may not have changed, having this information would have impacted his review of the application.
- [71] Section 54.1(2)(g) of the *Edmonton Zoning Bylaw* states that “the Development Officer may use their variance power to relax the vehicular parking requirements in Schedule 1, the Bicycle Parking requirements in Schedule 2 and the loading requirements in Schedule 3, however such a variance shall only be considered in cases where the nature of the Use, the size of the Site, or other physical constraints result in a situation where the requirements cannot be met on site without unnecessary hardship or practical difficulties”
- [72] The Board finds that the Development Authority did not follow the direction of Council because physical constraints did not result in a situation where the requirements for this development could not be met on-site without unnecessary hardship or practical difficulties. Based on a review of the proposed revisions, the evidence of the Appellant and the other affected property owners who attended the hearing, the proposed revisions to the parkade are substantially located on the south side of the subject site, not the east side of the site where the trees are located. Therefore, the Board finds that the proposed reduction in the size of the parkade and the reduction in parking spaces for the most part does not have an impact on the trees that were to be left in place as required in the DC Provision pursuant to Section 922.7(a)(v). Therefore the Board finds that the justification

for granting the variance for parking by the Development Officer does not create unnecessary hardship or practical difficulties for the Applicant as defined in Section 641(4)(b) of the *Municipal Government Act*.

- [73] Pursuant to section 641(4)(b) of the *Municipal Government Act*, if the Board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.
- [74] The proposed development is a revision to four storey Apartment House which is a listed Use in the DC2.922 Site Specific Development Control Provision.
- [75] The Board has not granted a variance to Section 54.2, Schedule 1(A) of the *Edmonton Zoning Bylaw* for the following reasons:
- a) Certain findings of the Parking Study are based on calculations that the subject site being located within 100 metres of a Transit Avenue. However, the subject site is located beyond 100 metres from a Transit Avenue and therefore those findings do not apply.
  - b) The Board notes that Transportation did not oppose the variance but provided no specific reasons for their conclusion and imposed conditions should this application had been approved.
  - c) The Appellant and three other affected property owners attended the hearing in opposition to the proposed revisions and reduction in the number of parking spaces. In addition, one neighbour sent in a letter in support of the appeal.
  - d) Although not a statutory requirement, the Respondent did not provide community consultation to support the proposed revisions.
  - e) There were no letters of support received and no one attended in support of the proposed development.
  - f) The Board accepts the evidence of the parties that there are already parking constraints in the area.
  - g) Based on the evidence provided, the primary reason for the proposed revisions is based on economic impacts for the developer which is not a planning principle that can be considered by the Board.
- [76] 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 and value of neighbouring parcels of land.

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

Board members in attendance: Ms. P. Jones, Ms. G. Harris, Mr. A. Nagy, Ms. K. Thind

**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.

*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: March 17, 2017  
Project Number: 226112420-001  
File Number: SDAB-D-17-048

**Notice of Decision**

- [1] On March 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 6, 2017**. The appeal concerned the decision of the Development Authority, issued on January 16, 2017, to approve the following development:

**To operate a Major Home Based Business. (Bed and Breakfast - LAMAR  
GWALTNEY)**

- [2] The subject property is on Plan 1320860 Blk X Lot 10B, located at 9629 - 84 Avenue NW, within the RF2 Low Density Infill Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments and the approved Development Permit; and
  - The Development Officer’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Written submission 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.
- [7] The Presiding Officer informed the parties present that the Appellant had been contacted and advised that he would not be attending the hearing. He instructed the Board to proceed with the hearing based on his written reasons for appeal which included concerns

regarding the negative impacts of this type of commercial use in a residential neighbourhood, specifically increased traffic, parking and safety concerns as a result of strangers coming into the neighbourhood.

### **Summary of Hearing**

#### *i) Position of the Development Officer, Mr. J. Angeles:*

[8] Mr. Angeles consented to allow the Board Officer to access notification information on the POSSE computer system. It was clarified by the Board Officer that approval of the development permit was published in the newspaper on January 24, 2017. The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the "*Municipal Government Act*").

[9] The proposed development is a Discretionary Use in the RF2 Zone that complies with all of the development regulations, with the exception of the minimum required number of parking spaces. The application was approved with a variance of one parking space.

[10] Mr. Angeles provided the following responses to questions:

- a) The Bed and Breakfast will operate from an approved Secondary Suite in the basement of this house.
- b) There are two bedrooms to accommodate a maximum of four guests.
- c) The Bed and Breakfast can be used for short or long term rentals depending on the needs of the guests.
- d) The Secondary Suite has a separate entrance.
- e) There are three parking spaces at the rear of the property, two inside the garage and one on the side of the garage.
- f) The Bed and Breakfast has two bedrooms and therefore requires two parking spaces.

#### *ii) Position of the Respondent, Mr. L. Gwaltney:*

[11] Mr. Gwaltney provided a written submission, marked Exhibit "A", which included photographs of the house and the Secondary Suite that is used for the Bed and Breakfast.

[12] He and his partner advertise this Bed and Breakfast on Airbnb as well as three other properties that they own in B.C. and Costa Rica. His partner has been designated as a Superhost for Airbnb. Superhosts are experienced hosts who provide a shining example for other hosts and extraordinary experiences for their guests.

[13] Mr. Gwaltney referenced some of the comments provided by their guests contained in his written submission. The majority have provided a 4.9 rating which he noted is almost perfect.

[14] They make every attempt to preserve the character of the neighbourhood and encourage guests to participate in community activities.

- [15] All of their guests are screened. The Bed and Breakfast operation satisfies all of the requirements for an Airbnb. The house manual contains all of the rules to be followed by their guests. They want to ensure that there are no noise complaints or disturbances for their neighbours.
- [16] They take pride in their rental and want to present Edmonton and its neighbourhoods in a different light than a hotel and provide a different experience for their guests.
- [17] Their personal vehicles are always parked at the rear of the property. There is one additional parking space at the rear for their guests. Guests are always asked to park their vehicles directly in front of their house so as not to inconvenience their neighbours.
- [18] Mr. Gwaltney provided the following responses to questions:
- a) He and his family reside on the main floor of this house.
  - b) There are two bedrooms in the basement. There is a separate kitchen.
  - c) Their Nanny cleans the Bed and Breakfast rooms between guests.
  - d) The majority of their guests only have one vehicle.
  - e) Both bedrooms are rented to one family group at a time.
  - f) The bedrooms are rented approximately 60 to 70 percent of the time and of that time approximately 50 to 60 percent of the time both rooms are rented.

### **Decision**

- [19] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:
1. The business owner must live at the site. The business must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building;
  2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 centimetres (8 inches) by 30.5 centimetres (12 inches) in size located on the Dwelling;
  3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;
  4. The number of non-resident employees or business partners working on-site shall not exceed two at any one time;
  5. The number of visits associated with the business shall not exceed the number approved with this application;
  6. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business;
  7. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced;
  8. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood;

9. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business;
10. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details change;
11. This approval is for a five year period from the date of this decision. A new Development Permit must be obtained to continue to operate this business from this location. The Development Permit expires on March 17, 2022;
12. The number of temporary sleeping units for Bed and Breakfast on site shall not exceed two. Cooking facilities are prohibited within temporary sleeping units.

Notes:

1. This Bed and Breakfast operation is within the Secondary Suite. It shall not be shared with the Principal Dwelling.
2. The total maximum number of adults for this Bed and Breakfast operation is four.
3. 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.
4. This Development Permit is not a Business License.

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

- [1] The minimum allowable number of parking spaces of 4 as per Section 54.2 Schedule 1(A)(3) and (8)(a) is varied to allow a deficiency of 1 space, thereby decreasing the minimum allowed to 3 parking spaces.

### Reasons for Decision

- [21] A Major Home Based Business (Bed and Breakfast) is a Discretionary Use in the RF2 Low Density Infill Zone.
- [22] The proposed Major Home Based Business (Bed and Breakfast) complies with all of the development regulations pursuant to Section 75 of the *Edmonton Zoning Bylaw* with the exception of a deficiency of one parking space.
- [23] The Board finds that the proposed Major Home Based Business (Bed and Breakfast) is reasonably compatible with the neighbourhood because the building was approved as a Single Detached House with a separate approval for a Secondary Suite. Two bedrooms in the Secondary Suite will be used as rental units for the Bed and Breakfast operation.
- [24] The Board is not persuaded on the basis of the evidence provided that the proposed development is not reasonably compatible with the neighbourhood.

[25] The Board has granted the required parking variance for the following reasons:

- a) Based on the evidence provided, the Board does not find that the proposed development, with a deficiency of one parking space, will impact on street parking in this neighbourhood.
- b) The Board accepts the evidence of the Respondent that the occupancy rates for the Bed and Breakfast are between 60 and 70 percent of which approximately 80 percent of the occupancies are for both sleeping units.
- c) The Board accepts the evidence provided by the Respondent that based on their experience, only one parking space is required by their guests the majority of the time.
- d) Three onsite parking spaces provided are sufficient to serve the needs of the Bed and Breakfast operation without adversely affecting the neighbourhood.

[26] For all of the above reasons, the Board finds that the proposed development is reasonably compatible with the neighbourhood and will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance: Ms. P. Jones, Ms. G. Harris, Mr. A. Nagy, Ms. K. Thind



**Important Information for the Applicant/Appellant**

1. This is not a Business Licence. A Business Licence must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, 10111 – 104 Avenue NW, Edmonton.
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**EDMONTON  
TRIBUNALS**

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Date: March 17, 2017  
Project Number: 223071291-002  
File Number: SDAB-D-17-046

**Notice of Decision**

- [1] On March 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 7, 2017**. The appeal concerned the decision of the Development Authority, issued on February 2, 2017, to refuse the following development:

**To install a Freestanding Minor Digital Off-premises Sign (6.1 metres by 3.0 metres - facing East/West)**

- [2] The subject property is on Plan 8220508 Blk 30 Lot 9, located at 17104 - 90 Avenue NW, within the CSC Shopping Centre Zone. The Summerlea Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submissions; and
  - The Appellant’s submission of documents.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Elevation drawing submitted by the Appellant
  - Exhibit B – Photographs submitted by the Appellant

**Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer advised that Mr. Colistro had previously been the Chairman of the Board and had left approximately two years ago. 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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

### **Summary of Hearing**

*i) Position of the Appellant, Mr. R. Colistro, Legal Counsel for Icewerx Consulting Inc.*

- [8] The sign was originally approved in April 16, 2013. Thereafter, it was constructed and put into operation.
- [9] As evidenced in the photographs provided in the Development Officer’s submission, the placement of the sign is consistent with other signage on the street.
- [10] Previously the City was more relaxed in its interpretation of the setback regulations. A sign could be built into a setback if the pole was located outside the setback.
- [11] In this case, the pole is located outside the setback but the overhang is in the setback.
- [12] Mr. Colistro submitted an elevation drawing, marked Exhibit A. It is the same sign as the one approved in 2013 except the pole is to one side of the sign rather than in the middle.
- [13] Section 687 of the *Municipal Government Act* provides that the Board may issue a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, 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, and the proposed development conforms with the use prescribed for that land or building in the land use bylaw.
- [14] In this case, the proposed sign is a Discretionary Use in the CSC Shopping Centre Zone. Other than the setback requirement, the sign complies with all other sign regulations.
- [15] Mr. Colistro referred to the aerial photograph of the site included in the Development Officer’s submission. To the west of the site is the overflow parking site for West Edmonton Mall. Across the street from the site is the parking lot for West Edmonton Mall. The sign will not look out of place as the area is commercial and commercial signage is quite prominent. It is not located close to any residential area so there will be no interference with residents. There are no issues with separation distance to other signs. Other signs are either On-premises Signs or signs with no permits in place.
- [16] As evidenced by the email provided, Transportation Services has no objection to the proposed sign.

- [17] There have been no known complaints since 2013.
- [18] There is no history of traffic incidents.
- [19] The sign is located entirely within the property.
- [20] The sign is situated 6 feet from the ground. The sign does not impact sightlines. The sign automatically adjusts with light.
- [21] The Appellant is seeking a 5 year term. This gives the City and any affected party an opportunity to reevaluate the sign to ensure compatibility and no undue impact.
- [22] The list of standard conditions set out by the Development Officer would be acceptable to the Appellant and would operate to mitigate any impact of sign.
- [23] In response to the Board's questions, Mr. Colistro provided the following information:
- a) Shifting the sign further back would create more obstruction than currently exists.
  - b) The application is to leave the sign in its current place. Moving the pole to the center of the sign would involve significant construction issues.
  - c) There are no digital signs within 300 metres. There is signage along the avenue that is not digital. Mr. Colistro indicated that since the sign is completely within the property, no encroachment agreement is necessary.
- ii) *Position of the Development Officer, Mr. S. Ahuja*
- [24] Mr. Ahuja referred to the plans submitted with the 2013 permit application which clearly show a 6 meter setback from the property line to the face of sign. The 2013 application shows the whole sign within 5.6 metres of the property line. The pole is not located 6 meters from the property line.
- [25] The sign will not be blocked by the gas bar canopy.
- [26] Under Section 17 of the *Edmonton Zoning Bylaw*, if a sign is not located as approved, that permit is invalid. There was a compliance initiated on this property that later revealed this sign was not located as approved. The complete sign is within the setback.
- [27] Upon questioning from the Board, Mr. Ahuja referenced the aerial photograph and indicated where the sign should have been located, with the pole in the center of the sign and the face of the sign at 6 metres from the property line.
- [28] Upon questioning from the Board, Mr. Ahuja indicated that Transportation reviews a location of a sign relative to the stop line. They review the traffic cone of vision and guidelines for distraction. Setbacks are considered *Edmonton Zoning Bylaw* requirements.

- [29] Upon questioning from the Board, Mr. Ahuja indicated that in order for this sign to conform, both the pole and overhang would have to be relocated. The sign face has to be 6 metres from the property line. The overhang is not located on city property just within the setback.
- [30] Upon questioning from the Board, Mr. Ahuja could not confirm the exact distance of the pole into the setback as the survey does not provide the dimension to the pole. The whole sign appears with 5.6 metres and short the 6 metres requirement.
- [31] Upon questioning from the Board, Mr. Ahuja confirmed the first permit was issued in 2013 and he is not aware of sign prior to that. If this sign is approved, a new Building Permit application would have to be made with the new drawings.

*iii) Rebuttal of the Appellant*

- [32] Mr. Colistro submitted additional photographs, marked Exhibit B. The photographs depict 90 Avenue looking westbound, east of 170 street. As can be seen, a good portion of the sign is obstructed. Once the intersection is crossed, the sign is still obstructed. Pushing the sign face further would cause more obstruction.
- [33] The present application has the pole where it currently exists and a variance is required. Mr. Colistro acknowledges that the sign was not built in accordance with the plans as approved in 2013. They are asking the Board to consider the application pursuant to its test and they have provided sufficient grounds for a variance.
- [34] The drawings for the Building Permit will be based on the current sign location.

**Decision**

- [35] 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 Minor Digital Off-premises Sign permit is approved until March 17, 2022.
  2. The Minor Digital Off-premises Sign shall comply in accordance to the approved plans submitted.
  3. 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) 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))
4. The Minor Digital Off-Premises Sign shall comply with the following conditions in consultation with the Transportation Planning, in accordance to 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.

ADVISEMENT:

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.

- [36] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- a) Section 59E.3(5)(i), which states that proposed Signs with an Area greater than 8.0 square metres shall not be located within any Setback, is waived. The minimum allowable Setback of 6.0 metres as per Section 320.4(3) is varied to allow a deficiency of 5.73 metres, thereby decreasing the minimum allowed to 0.27 metres.

**Reasons for Decision**

- [37] A Minor Digital Off-premises Sign is a Discretionary Use in the CSC Shopping Centre Zone.
- [38] The Board finds this development is reasonably compatible with the surrounding neighbourhood as, based on the photographic evidence provided, signage of all types and variety are prevalent in the neighbourhood
- [39] The Board finds the proposed development with variance 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 because:
- a) This Sign complies with every other required regulation, other than Setback.
  - b) There are not any known complaints or traffic incidents associated with this Sign during its operational period.
  - c) Transportation does not object to this Sign.
  - d) There are no nearby residential developments that would be affected by this Sign.
  - e) The photographic evidence provides that much of land uses surrounding this Sign are parking lots.
  - f) The Sign is contained entirely within the Site and no encroachment agreements are required.
- [40] The conditions imposed will mitigate any potential adverse effects that the Sign may have.

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

Board members in attendance: Ms. P. Jones, Ms. G. Harris, Mr. A. Nagy, Ms. K. Thind

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