

SDAB-D-16-084

Application No. 180912276-001

An appeal by Red Hammer Construction to construct an addition and exterior alterations, and a rear covered deck (3.05m x 6.25m) to a Single Detached House on Plan 7239AH Blk 6 Lot 17, located at 11117 – 127 Street NW, was **TABLED TO APRIL 28, 2016.**



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 14, 2016
Project Number: 154473783-001
File Number: SDAB-D-16-085

Notice of Decision

- [1] On March 31, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 4, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 25, 2016**, to refuse the following development:

construct a Semi-Detached House with attached garages, front verandas, fireplaces, balconies

- [2] The subject property is on Plan 2064S Blk 11 Lot 2, located at 11204 - 77 AVENUE NW and Plan 2064S Blk 11 Lot 1, located at 11204 - 77 AVENUE NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.

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

- Correspondence between the Appellant and the City with plans attached;
- Plans submitted to the Board;
- The refused development permit;
- Revised drawings;
- A revised plot plan;
- A revised Transportation Services response;
- The Development Officer's written submissions; and
- The McKernan/Belgravia Station Area Redevelopment Plan.

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

- Exhibit A – The Appellant's PowerPoint Presentation;
- Exhibit B – The Development Officer's highlighted Site plans;
- Exhibit C – Ms. Franchuk's PowerPoint Presentation; and
- Exhibit D – A Neighbourhood Consultation for Proposed Development letter.

Preliminary Matters

- [5] Prior to opening the hearing, the Board brought two matters to the attention of the Appellant.
- [6] First, the Board noted that the Development Officer had incorporated new amendments made to the *Zoning Bylaw* passed after the refusal into her written submissions, which impacted the proposed development. Three additional variances will now be required for the Appellant's appeal to succeed.
- [7] The Board then advised the Appellant that, based on a recent Alberta Court of Appeal decision, it does not have the authority to waive the community consultation requirement of the Mature Neighbourhood Overlay (*MNO*).
- [8] In light of these very recent developments, the Board inquired as to whether the Appellant was prepared to proceed. The Appellant stated that he was prepared to proceed with the hearing as scheduled despite the issues raised by the Board. He confirmed that the submitted plans were final, and he wished to have the appeal heard on that basis.

Summary of Hearing

- [9] 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.
- [10] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.
- i) *Position of the Appellant, Mr. P. Dinahmadi*
- [11] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal. He further stated that, for the purposes of the hearing, he intended to rely on a Subdivision and Development Appeal Board decision dated November 28, 2013. This prior decision pertained to the adjacent property to the north of the subject Site that was also developed by the Appellant. The proposed development follows the same concept as the semi-detached development to the north that was approved in 2013.
- [12] He stated that the proposed development is in step with the City's goal of encouraging increased density in mature neighbourhoods and producing more affordable family housing.
- [13] The plans were modified to accommodate suggestions made by the Community League and the Development Authority. Originally, the building entrance faced 77th Avenue with both Driveway accesses facing the same direction. At the request of the Community League, the revised plans now show that the building has been rotated to face 112th

Street. Although these modifications were also intended to limit the number of required variances to the *Zoning Bylaw*, due to the irregular dimensions of the subject Site, any development proposal would require a number of variances.

- [14] He then addressed the required variances listed in the Development Officer's reasons for refusal.
- [15] The Front Setback deficiency will be addressed by assessing the proposed development as if the property line along 112th street was the Front Lot Line.
- [16] Although the Rear Setback deficiency cannot be remedied due to the dimensions of the subject Site, it is in line with the adjacent development to the north and is harmonious with the new block corner.
- [17] The basement elevation variance will be required to accommodate a steady slope for the Driveway and the size of a standard Garage entrance. In its 2013 decision, the Board imposed a condition to lessen the slope of the driveway leading to the underground Garage. Therefore, the Appellant raised the ceiling by a foot in order to facilitate meeting that condition. He wants to do the same thing with the proposed development.
- [18] Although the proposed development falls short of the minimum Site Area requirement of the *Zoning Bylaw*, it does so by only 13.4 square metres or 3%. Similar developments have been approved and constructed in the area. He is also 8.7 metres short on Site Depth, but any development on this Site will require the same variance because of its dimensions.
- [19] The proposed plan revisions provide amenity areas at the southeast and northeast corners of the Site. More privacy can be obtained through proper fencing. There are also amenity areas on the balconies. The Appellant acknowledged that, if the *Zoning Bylaw* prohibits amenity areas in the front yard, there will need to be another variance to permit private amenity spaces at the proposed locations.
- [20] While the *Zoning Bylaw* limits the proposed development to one Driveway, both Dwellings require an access from the street. Transportation Services initially supported the proposed, double-access Driveway when the proposed development was to face 77th Avenue, but they no longer support it now that the building will be rotated to face 112th street. They are concerned about the volume of pedestrian and bicycle traffic on the sidewalks. However, the neighbourhood is gaining a new sidewalk across the street, which will allow for a distribution of pedestrian and bicycle traffic across both sidewalks.
- [21] There is a plan in place to protect the tree in the front of the proposed development. There will be a 2.82-metre limit of approach put in place to avoid damaging the tree roots. The curb crossing will also be narrowed to move traffic away from the tree. A similar plan was used on the adjacent property to the north, and that tree has been sufficiently protected.

- [22] With respect to the issues raised as a result of recent amendments to the *Zoning Bylaw*, the interior Side Setback, Rooftop Terrace Setback and landscaping problems created by the amendments could all be addressed by minor revisions to the plans and by shifting the building forward one metre. However, he will still require variances for the Site Area, Site Depth, Front Setback and Rear Setback, and he is uncertain of any other compliance implications of this shift.
- [23] The proposed plans have been revised several times to reflect feedback from the Community League and the Development Authority. He made visits to all properties within the 60-metre notification area, reviewed the required variances with the neighbours on those properties and collected feedback. This process was carried out three times. However, many of the neighbours consulted were tenants so he is still awaiting some feedback from the owners of those properties.
- [24] Throughout his presentation, the Appellant suggested several changes to the refused plans. However, at the end of his main submissions, he confirmed the plans submitted to the Board were final. He was not seeking an adjournment to revise his plans and address the unknown compliance implications. Instead, he was seeking all variances as required by the refused plans on file with the City and before the Board.

ii) *Position of the Development Officer, Ms. F. Hetherington*

- [25] The Development Officer stated that she reviewed the application with the Front Lot Line facing 77th avenue because Front Lot Lines are determined by interpreting the definition of Front Lot Line in Section 6.1(38) of the *Zoning Bylaw*. Pursuant to that definition, she determined that the Front Lot Line of the subject Site faces 77th avenue. That determination, in turn, determines the Rear and Side Lot Lines and the required setbacks. In any event, rotating the development does not change how it is evaluated by the Development Authority.
- [26] She then explained her reasons for refusal.
- [27] With respect to the Front Setback, the proposed development does not meet either the allowed variance from other adjacent setbacks or the absolute minimum of 3.0 metres required by the *Zoning Bylaw*. This proposed deficiency is not characteristic of the existing setbacks of the neighbouring homes along 77th avenue.
- [28] The Site has a hardship in terms of its depth and therefore the required Rear Setback would not be met for any Permitted Use. However, the proposed two-metre Rear Setback is insufficient and would negatively affect the abutting property to the west. With only a four-metre gap between the two 2.5 storey Semi-detached Houses, a large massing effect is created and any eastern sunlight would be blocked for that property.
- [29] In her view, although two Dwellings in a Semi-detached House might be designed to fit a Site with this type of hardship, a Single-detached House might be better for this Site.

- [30] In terms of Basement Elevation, the proposed development meets the maximum of 1.2 metres allowed by the *Zoning Bylaw* for approximately half of the floor area. However, it is the most visible area above the Garages and facing 112th street that exceeds this Height requirement.
- [31] Also, the proposed development does not meet the minimum Site Area requirements prescribed by the *Zoning Bylaw* for Semi-detached Housing. The Site Area proposed would be sufficient for other permitted uses, including a Single Detached House or a Duplex, but it is insufficient to accommodate the proposed development.
- [32] The Site Depth is also deficient 8.7 metres. The Site Depth does create a hardship, but the Site is also very wide at 20.15 metres, which creates opportunity. The Site Width could accommodate other designs, particularly for a Single-detached House.
- [33] With respect to the Private Outdoor Amenity Area, the dimensions proposed are deficient. Amenity spaces cannot be located in the Front Yard and the flanking outdoor area does not provide sufficient space. In addition, screening would be problematic.
- [34] As the corner Site has no lane, vehicular access to a street is necessary. On a corner Site, only one Driveway is permitted. The proposed development has two Driveways accessing onto 112th street. According to the plans, the Driveways are also at a 14% slope and require vehicles to reverse out of the Driveway at an angle, around a tree and onto a busy street within a block of a school. As 112th street has been designated as a key pedestrian and bicycle route, under the McKernan/Belgravia Station Area Redevelopment Plan, this is not suitable. The new sidewalk being put in across the street will result in even more foot traffic. It will not necessarily decrease the number of pedestrians and cyclists traversing the Driveways of the proposed development. Transportation Services does not approve of the Driveways for similar reasons concerning grade, safety and impact on mature trees in the adjacent boulevard.
- [35] In terms of the community consultation required by the Mature Neighbourhood Overlay, the Appellant submitted it to the Development Authority 51 days late, and it included only three neighbour consultations. One was signed by the property owner himself, as he owns one of the units in the adjacent property to the north. Another was signed by a family member who owns the other unit in the adjacent property, which is currently up for sale. The third was signed by a neighbour within the 60-metre notification area who was concerned about an increase in parking on 112th street. The Community League was also strongly opposed to the development. Although community feedback was received, in her view, three of 29 possible responses was not a sufficient response for the proposed development to move forward. She acknowledged that, pursuant to standard practice, she sent out notices with contact information outlining, in general terms, two of the three variances to the *MNO*, as the third had not been detected at that time.

- [36] Recent amendments to the *Zoning Bylaw* also affect the proposed development. Variances are now required for the Interior Side Setback (Section 140.4(17)(b)), the Rooftop Terrace Stepbacks (Section 140.4(17)(b)(i) and Section 140.4(17)(b)(ii)). The Interior Side Setback variance would be larger than previously calculated, as the submitted plan did not show the proposed raised platforms to access the rear of the Dwellings. Also, the requirement for a landscaping plan (Section 140.4(19)) would have to be waived, as there is no existing landscaping plan. This gave her concern given the landscaping on the property to the north.
- [37] Also, the elevated rear platforms for Dwelling access and the windows along the roof of the building create privacy concerns for the adjacent neighbour. These concerns were not pursued or cited in the refusal due to the existence of the other reasons for refusal.
- [38] While there is a hardship pertaining to the subject Site in terms of its dimensions, the proposed development has to accommodate that hardship to some degree. Attempting to fit these two Dwellings on this particular Site is unrealistic.
- [39] Further, the Driveways cover 58% of the width of the property located between the Front Lot Line and the lane. This is excessive.
- [40] Finally, she stated that the purpose of the Mature Neighbourhood Overlay is to ensure that new development is sensitive in scale to existing development, pedestrian traffic, potential sunlight blocking and other factors. In her view, no part of the Mature Neighbourhood Overlay is met by the proposed development.

iii) Position of Affected Property Owners in Support of the Respondent

- [37] Ms. Franchuk and Ms. Gray, members of the Community League, appeared in opposition to the proposed development.
- [38] Ms. Franchuk stated that the density level of the proposed development is not in keeping with the neighbourhood. The lot is too small to accommodate such a development – it is a massive amount of house on a small lot. It will require variances to a large number of *Zoning Bylaw* regulations. The massing effect will be a significant issue. In particular, the neighbour to the west will be majorly affected. That house will be blocked entirely.
- [39] The proposed development would produce safety concerns for pedestrians. It will be very difficult to see vehicles exiting the parking area and the recessed Driveways. Front driveways are not characteristic of this mature neighbourhood. It has mostly rear-detached garages.

- [40] As Community League president, she was approached twice in December of 2014 regarding this development, specifically about the orientation of the Driveways to either 77th avenue or 112th street. The Community League expressed its concerns about the Driveways at that time. Subsequent discussions have occurred with the planning department only and not with the Appellants.
- [41] The proposed development has a greater adverse aggregate impact because now it is over the top with four Driveways on what is essentially a one-lot space along 112th street.
- [42] She has been asked by community members about the development and explains that if neighbours feel that the Community League is on top of the case and raising their concerns, they do not have to be.
- [43] The Community League is not opposed to higher density developments in general and has supported them, but the proposed development will not be beneficial.
- [44] Ms. Gray stated that she and her husband had concerns about the Site to the north when it was built and all *Zoning Bylaw* regulations were ignored. The same thing is now happening with the proposed development. The Community League would like to preserve the integrity of the neighbourhood. The proposed development runs contrary to the character of the neighbourhood, and the nature of the variances being requested is not in keeping with the Mature Neighbourhood Overlay.

iv) Rebuttal of the Appellant

- [42] In rebuttal, the Appellant stated that, despite the positions of the Development Authority and the Community League, the proposed development complies with the Mature Neighbourhood Overlay. The maximum Site coverage of 42% has been complied with. The development to the north is also compliant. Bylaw officers have inspected it and confirmed as much.
- [43] With respect to the community consultation process, he has not knocked on every door personally, but he did get verbal support from most residents, even if they chose not to put that support in writing.
- [44] He believes that interference with the neighbour to the west should not be a significant concern. Sunlight from the south and west is not impacted, and windows can be frosted. Any 2.5-storey development, including a Single-family house, will raise the same issues. In any event, the Site to the west is likely to be redeveloped in the near future.

[45] He confirmed the dimensions of the concrete quadruple Driveways and contiguous sidewalks on the subject Site and on the Site to the north, which is of a similar width. When asked, he agreed that the Front Yards of the two developments will be mainly concrete. However, as there are four Dwellings associated with those Driveways, he believes the amount of concrete is justified under the *Zoning Bylaw*. The proposed curb crossings are only 5.5 metres in width.

Decision

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

Reasons for Decision

[47] While the Appellant proposed several revisions and combinations of revisions to the proposed development plans, at the conclusion of the hearing, he asked the Board to make this decision based only on the refused plans that were on file and in evidence at the hearing.

[48] The proposed development, Semi-detached housing, is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[49] The proposed development involves at least 10 variances to the general development regulations for the RF3 Zone and to the Mature Neighbourhood Overlay (*MNO*). Variances are sought to the Front Setback, Rear Setback, Interior Side Setback, Basement Elevation, minimum Site Area, minimum Site Depth, Private Outdoor Amenity Areas, upper-balcony Stepbacks, rooftop-balcony Stepbacks and Landscaping requirements.

[50] While the Board recognizes that this lot's dimensions (20.14 metres by 21.30 metres) and location (a corner Site with no lane access) will create significant challenges no matter what development is proposed, the particular proposed development before the Board has material, negative impact for the reasons that follow.

[51] The proposed development is contrary to the purpose of the *MNO* set out in Section 814 of the *Zoning Bylaw*. It fails to maintain the pedestrian-friendly design of the streetscape and to ensure privacy and sunlight penetration on adjacent properties.

[52] In the opinion of the Board, the proposed development is simply too close to the property lines, too large for the Site and interferes too greatly with 112th street. The Board accepts that some regulations have been met but holds that this partial compliance does not ameliorate the negative impacts of the required variances and does not satisfy the Board's concerns.

- [53] The proposed development requires variances to all three minimum setbacks: a 6.5-metre variance to Rear Setback, a 4.4-metre variance to Front Setback and a variance of approximately 2.2-metres to Interior Side Setback.
- [54] The Front Setback of the adjacent property to the west is 7.30 metres per the Appellant's plot plan. This variance is not characteristic of the block face along 77th Avenue. With the proposed Front Setback variance, the building will jut out significantly (4.8 metres) in front of the house on the adjacent property to the west. Further, the three setback variances together create significant sunlight impacts for that adjacent property. With these variances, the Board finds development will materially block sunlight from the east and southeast. This is contrary to the general purpose of the *MNO*.
- [55] The proposed design and location of the building also create significant massing impacts for the adjacent neighbour to the west. The setback variances and design (which includes raised platform entryways and several windows along the rear of the building) also create privacy concerns. This is contrary to the general purpose of the *MNO*.
- [56] The Board further notes that the actual variance to Interior Side Setback could not be determined accurately at the hearing as the submitted Site Plan indicated a 2.0-metre distance from the rear of the building to the Rear Lot Line, but failed to include the raised platform areas for rear steps into the Dwelling units, which the Appellant estimated to project about four feet further toward the Interior Side Lot Line. These two structures should have been included in the calculation of the required setback variance. Their inclusion will bring the actual Interior Side Setback to approximately 0.8 metres rather than the 3.0 metres required by the *Zoning Bylaw* or the 2.0 metres indicated on the submitted plot plan.
- [57] The proposed development features four adjacent side-by-side parking spaces and a shared, sloped quadrupled Driveway to the attached Garages. The proposed Driveway narrows and divides into two separate accesses across the public boulevard to 112th street. This quadruple Driveway has significant adverse impacts:
- i) Transportation Services objected to the Driveway due to safety and design concerns for both residents and passersby along 112th street.
 - ii) The Driveway has a ramp slope of 14 percent, which exceeds Transportation Services' allowed maximum ramp slope of 6 percent for the first 4.5 metres of the Driveway creating additional access and safety concerns.

- iii) Vehicles using the Driveway to exit the attached underground parking spaces must reverse at an angle, up a ramp, past retaining walls, across a sidewalk, around a tree and onto a busy street that has been designated as a key pedestrian and cyclist route and located within very close proximity to a school.
 - iv) The Board accepts Transportation Services' conclusion that this design and the introduction of two new accesses connecting the Driveway to 112th street creates additional conflicts between motorists backing out of the Driveway and passing pedestrians, cyclists and drivers.
 - v) The McKernan-Belgravia Station Area Redevelopment Plan (*MBSARP*) envisions significant increases in the volumes of pedestrians and cyclists in the area and along 112th street in particular. According to the plan, this increase is part of the impetus for a new public sidewalk on 112th street. Adding a quadruple recessed Driveway with two accesses is inconsistent with the *MBSARP*, which designates 112th street as a high-volume pedestrian and cycling corridor. It is also inconsistent with the requirement for pedestrian-friendly development under the *MNO*.
 - vi) Transportation Services has also objected to the location of the two accesses and curb crossings, as the submitted plan will require the removal of boulevard trees.
 - vii) The Community League is also opposed to the Driveway for similar safety reasons.
 - viii) The proposed quadruple Driveway, together with the adjacent proposed walkway, results in a large area of monolithic concrete spanning approximately 14 metres of the yard facing 112th street. As acknowledged by the Appellant, the area he intends to be a Front Yard will be almost entirely monolithic concrete.
- [58] The Board notes that 77th avenue presents an alternative for vehicular access to the Site, and Transportation Services recommended and supported the original development application for the subject Site that took access from 77th avenue.
- [59] The proposed development lacks adequate Private Amenity Areas. The proposed areas are insufficient in size and non-compliant with the development regulations in terms of location. The proposed rooftop-balcony amenity areas will be even smaller if the newly required stepback regulations are met.
- [60] Private Outdoor Amenity Areas cannot be located in the Front Yard so the proposed plans require another variance. If another variance were granted to exempt the proposed development from this regulation, adding privacy screening in the proposed Front Yard locations at ground level on this corner lot could interfere with sight lines along 77th avenue and 112th street, adversely impacting pedestrians, motorists and cyclists.

- [61] The Appellant argued that the Board should consider 112th street to be the Front Lot Line because this would reduce the number of required variances and their magnitudes. The Board has rejected this proposal because Section 6.1 (38) of the *Zoning Bylaw* defines Front Lot Line. Pursuant to this definition, 77th Avenue is the designated Front Lot Line. Definition cannot be varied by the Board.
- [62] The Board notes that the sheer number and size of variances associated with a development are not determinative of appeals under Section 687 of the *Act*. However, they may be indicative of overall adverse impacts and interferences when considered together and in context.
- [63] Even if the Board considered 112th street to be the Front Lot Line and recalculated the required setbacks, variances and all other applicable regulations, this recalculation would not in any way negate or mitigate the adverse impacts of the proposed development including privacy, sunlight and pedestrian friendliness or safety.
- [64] The Board finds that the Appellant failed to provide landscaping plans or make other efforts to ameliorate the massing effect and privacy impacts of the proposed building or the cumulative impacts of the requested variances. In addition, he is seeking a variance to be exempted from the newest development regulation, 140.4(19), which addresses redevelopment in mature areas and provides in part:
- In addition to the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to:
- a. replace vegetation removed during construction;
 - b. reinforce an established Landscaping context in the area;
 - c. soften edges and transitions between the street and the structure...
- [65] The Board accepts the Appellant's submission concerning the efforts he made to perform neighbourhood consultation and finds that the Appellant's actions were adequate to satisfy the requirement for neighbourhood consultation under Section 814 of the *MNO*. The Board finds that the responses to this consultation were very low and are not conclusive of neighbourly support or opposition. The Board notes that the Community League objects to the variances requested for the proposed development.

- [66] The Appellant urged the Board to approve the development on the basis that a similar development had been approved on the immediately adjacent Site to the north in 2013. The Board acknowledges this decision but notes that it is not bound by precedent. Each case must be considered individually on its own merits and in accordance with Section 687(3) of the *Act*.
- [67] Based on the evidence and submissions provided, the Board is satisfied that the proposed development would unduly interfere with the amenities of the neighbourhood and materially interfere with the use, enjoyment or value of neighbouring parcels of land.

Ms. K. Cherniawsky, 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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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TRIBUNALS**

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Date: April 14, 2016
Project Number: 180472349-001
File Number: SDAB-D-16-086

Notice of Decision

- [1] On March 31, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 2, 2016**. The appeal concerned the decision of the Development Authority, issued on February 23, 2016, to refuse the following development:

install (1) Freestanding Minor Digital Off-Premises Sign (Northgate Shopping Centre)

- [2] The subject property is on Plan 0021646 Lot 1, located at 9499 - 137 AVENUE NW and Plan 6594MC Blk 27, located at 9499 - 137 AVENUE NW, within the CSC Shopping Centre Zone.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Written submissions from the Appellant's legal counsel;
 - Canada Post delivery confirmation;
 - A circulation response;
 - The refused development permit with attached plans;
 - A Sign Combo Permit application;
 - A response from Transportation Services; and
 - The Development Officer's written submissions.

Summary of Hearing

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

i) *Position of the Appellant, Mr. J. Murphy*

- [6] Counsel for the Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [7] The proposed Sign has not been refused on the basis that it adversely affects the surrounding neighbourhood. It is simply a matter of requiring variances.
- [8] Given the commercial context of the subject Site and the scale of the surrounding development, none of the three variances requested are untoward, nor will they result in any material interference with the amenities of the neighbourhood or the neighbouring parcels of land.
- [9] Further, because the permit is limited to a term of five years, if there is any concern about changing circumstances, the proposed development can be re-visited at the end of that term.
- [10] With respect to the first reason for refusal, the proliferation of Signs on a single Site, counsel referred to Schedule 59E of the *Zoning Bylaw* and stated that everything in that Schedule reflects a parcel size of two hectares, the minimum parcel size contemplated for a Site in the CSC Shopping Centre Zone. The regulations were written with smaller properties in mind. However, the subject Site is approximately 9.75 hectares in size, almost five times the size contemplated by the *Zoning Bylaw*. Therefore, this particular Site can accommodate more Signs than the number prescribed by Schedule 59E.
- [11] With respect to the second reason for refusal, the size of the Sign, the Sign is actually not too big; it is merely bigger than the *Zoning Bylaw* allows for. The *Bylaw* was written for Signs that are 10 metres by 20 metres. The proposed Sign is larger but not so much so that the incremental increase is perceivable to the eye. It is not an appreciable difference, especially in the context of a large Site. The increase in the size of the Sign does not result in any additional impact on the amenities of the neighbourhood or neighbouring parcels of land, particularly at this location.
- [12] The third reason for refusal is the Sign's proximity to an existing Sign. Different locations for the Sign were proposed, but did not work. The proposed location, however, is sufficient to accommodate the Sign. It does not take away any parking and is tucked away so as to not interfere with the rest of the Site. The conflicting Sign in question faces north-east. In dealing with separation issues, the important factor is identifying whether both Signs are visible from the same direction. In this case, although both Signs cannot be read at the same time, they can both be seen at the same time when approaching from the North.

- [13] The fourth reason for refusal, the 45-metre radial separation distance, is not applicable to the proposed development and, therefore, a variance is not required for it. That regulation applies only to Permitted Uses. The proposed development is a Discretionary Use in the CSC Shopping Centre Zone. Schedule 59E does not include a reciprocal 45-metre radial separation distance for Discretionary Uses.
- [14] Whether or not variances should be granted comes down to an analysis of whether or not the variances will cause any harm to the surrounding neighbourhood. None of the variances being sought in this case will unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring parcels of land.
- [15] He confirmed that, if the Board has concern with the separation distance requirement, the Appellant would be amenable to a condition requiring the Sign to be one-sided facing the south. A single-sided Sign facing south could not be seen at the same time as the competing Sign in question.

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

- [16] The Development Officer confirmed that constructing a single-sided Sign would lessen the overall impact of the Sign on one side. However, the radial separation and proliferation issues would remain.
- [17] With respect to whether or not the radial separation requirement was applicable to the proposed development, he stated that, if a Permitted Sign has a radial separation requirement, a Discretionary Sign should require it as well. He did not know why the reciprocal provision was not provided in the Schedule for Discretionary Signs.
- [18] He also confirmed that the subject Site, due to its size, can accommodate more Signs. However, all of the Signs would have to comply with separation distance requirements.

iii) Rebuttal of the Appellant

- [19] In rebuttal, counsel for the Appellant reiterated that Courts have given the direction that these situations are not to be considered exclusively through the lens of the *Zoning Bylaw*. The Board has to determine whether or not the proposed development will do any harm to the neighbourhood and exercise its broad variance powers on that basis.

Decision

- [20] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** with the following conditions:

- i)* The development permit is limited to a term of five years; and
- ii)* The development shall be a single-faced Sign, and the face intended to provide Copy shall face south.

[21] In granting the development, the following variances to the zoning bylaw are allowed:

- i)* The maximum number of Signs prescribed by Section 59E.3(5)(j) is varied from 4 to 7.
- ii)* The minimum separation distance prescribed by Section 59E.3(5)(d) is varied 67 metres from 200 metres to 133 metres.
- iii)* The maximum Sign area prescribed by section 59E.3(5)(c)(ii) is varied 6.75 square metres from 20 square metres to 26.75 square metres.

Reasons for Decision

[22] The proposed development is a Discretionary Use in the CSC Shopping Centre Zone.

[23] The Board notes that during the hearing, the Appellant agreed to remove the north-facing Sign face given that the Sign location does not meet the separation distance required by 59E.3(5)(d) and that drivers approaching from the North will be able to see the next nearest digital Sign and the proposed Sign simultaneously. Accordingly, the Board has added a condition limiting the proposed development to a single-faced Sign.

[24] The Board notes that, pursuant to a comprehensive Sign package, six Signs are currently approved for the subject Site. The proposed Freestanding Off-Premises Minor Digital Sign will increase the total number of Signs on the subject Site by one. The Board notes that the seven Signs are dispersed over a large property and that one of those Signs is an entrance identification marker.

[25] The proposed variances are justified given the size of the subject Site and the size and scale of development on the subject Site and on surrounding developments. The area under consideration is entirely commercial in nature.

[26] The Board finds that a variance is not required to the minimum 45-metre radial separation distance from the two freestanding pylon Signs, pursuant to Schedule 59E.2(3)(e). That regulation applies to Permitted Signs. Based on evidence provided, the proposed development is a Discretionary Sign in this Zone and therefore subject to the regulations under 59E.3 not Schedule 59E.2. Schedule 59E.3 does not include a reciprocal 45-metre radial separation distance applicable to the proposed development.

- [27] The Board notes that the immediate area is commercial in nature, and the variance in size to the proposed development will have no impact on the nearest residential areas.
- [28] No letters of objection were received and no one appeared to oppose the proposed development.
- [29] Based on the above, the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring parcels of land.

Ms. K. Cherniawsky, 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 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.