



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 25, 2017
Project Number: 111208527-006
File Number: SDAB-D-17-083

Notice of Decision

- [1] On May 10, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on April 3, 2017. The appeal concerned the decision of the Development Authority, issued on March 21, 2017, to refuse the following development:

To install a Roof mounted Minor Digital Off-premises Sign (Single sided facing Southwest)

- [2] The subject property is on Plan NB Blk 7 Lot 92, located at 10752 - Jasper Avenue NW, within the JAMSC Jasper Avenue Main Street Commercial Zone. The Capital City Downtown Plan and the Special Area Downtown Overlay apply to the subject property.

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

- Copy of the refused permit and permit application, with attachments and plans;
- Canada Post receipt confirming delivery of the refusal decision;
- Development Officer's written submissions dated May 4, 2017;
- Correspondence from Transportation Planning and Engineering; and
- Previous decision of this Board, file reference SDAB-D-11-285.

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

- Exhibit A – Google Maps photos of the subject property and surrounding area

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

a) *Position of the Appellant, Pattison Outdoor Advertising*

[8] The Appellant was represented by legal counsel, Mr. J. Murphy. He was accompanied by Mr. M. Caney of Pattison Outdoor Advertising.

[9] The subject Sign was approved by a decision of this Board in December 2011. Two changes have occurred since that decision: first, the Zoning Bylaw now prohibits roof mounted Minor Digital Off-premises Signs. In this regard, the Appellant submitted that the Sign does not actually sit on the building's roof, nor is it supported by the adjacent walls. Rather, the Sign is installed upon a superstructure that sits atop the building.

[10] The second change is the construction of the Mayfair residential tower ("the Mayfair"), which is located across the street from the subject Sign, giving rise to concerns regarding Sign illumination into residential units. Mr. Murphy referred to a series of Google Maps photos (Exhibit A) to show the location of the Mayfair in relation to the subject Sign.

[11] The Appellant acknowledged that the Sign is visible from the Mayfair. However, there are several mitigating factors. First, a degree of light pollution is expected for the downtown core area, and prospective tenants can clearly see that there is a Digital Sign located across the street, before renting in the Mayfair. Second, the Sign is not angled directly at the Mayfair, but toward traffic flow along Jasper Avenue. Third, the Sign uses technology that detects ambient lighting and adjusts the brightness level accordingly.

[12] Upon questioning by the Board, Mr. Murphy confirmed that the first Storey of the Mayfair is not occupied by residential units. Rather, the residential floors appear to start from the second or third Storey. Furthermore, these residential units are set further back from the property line. As such, the illumination from the subject Sign would not be as impactful upon these residential units, though the Sign itself remains easily visible should a tenant look down toward the Sign.

[13] Referring to the Development Officer's written submissions, Mr. Murphy noted that one of the conditions recommended by the Development Officer, should the Board approve this development, is that the subject Sign must be de-energized between 10 p.m. and 6 a.m. While the Applicant would prefer that the permit not be limited by this condition, it is nevertheless a reasonable compromise should the impact of the Sign upon the Mayfair residential units be a determining factor for the Board. That being said, the Applicant would prefer that the Sign be de-energized starting from 11 p.m., rather than 10 p.m.

[14] With respect to the condition that the Sign be approved for a maximum of five years, Mr. Murphy explained that the owner of the subject Site communicated to him that

redevelopment of the lands will occur within one to three years. As such, the Appellant would be prepared to accept a shorter renewal period of three years.

- [15] The Development Officer also cited minimum separation distance requirements as a reason for refusal. Under the Zoning Bylaw, the minimum separation distance between the subject Sign and other Off-premises Signs must be 100 metres. Referencing a series of Google Maps photos (Exhibit A), Mr. Murphy acknowledged that there is a Freestanding Off-premises Sign located 70 metres away from the subject Sign. However, he noted that in 2011, the Board granted a variance to the separation distance requirement, and had no issue with the proximity to this other sign.
- [16] The Board referenced section 59F.3(2)(i), which resembles a grandfathering clause, and questioned whether this provision protects the subject Sign from the new prohibition against Minor Digital Off-premises Signs mounted on the roof. Mr. Murphy stated that this provision applies to Freestanding Off-premises Signs, whereas the subject development is a Roof mounted Off-premises Sign.
- [17] That being said, it cannot be said that the passage of the new bylaw regulations automatically blocks renewals of Roof mounted Minor Digital Off-premises Signs. He referenced the General Purpose statement of the (JAMSC) Jasper Avenue Main Street Commercial Zone, and submitted that the subject Site is likely the most appropriate location for a Minor Digital Off-premises Roof Sign on the Jasper Avenue shopping strip.
- [18] Mr. Murphy also noted that the prohibition was written into the regulations, therefore the possibility of a variance to this prohibition is contemplated. Furthermore, there may be circumstances where such a variance is appropriate, such as unsafe areas that might benefit from the extra illumination.
- [19] Upon questioning by the Board, he confirmed that there have been no complaints registered against the subject Sign. It was his understanding that notices regarding the subject Sign would have been mailed to the landlord of the Mayfair, but it is unclear whether the landlord would have communicated the information to the tenants.

b) *Position of the Development Authority*

- [20] The Development Authority was represented by Mr. S. Ahuja.
- [21] He explained that the prohibition on rooftop Minor Digital Off-premises Signs is that these signs are typically higher than the maximum Height restriction of eight metres for Digital Signs, which may be more impactful upon neighbouring properties such as the Mayfair. These Height restrictions were determined after consultation with the sign industry.
- [22] He confirmed that he is not aware of any complaint regarding the subject Sign. However, the Mayfair was previously a hotel, and it has only been recently converted into a

residential apartment. Furthermore, it is not currently at full occupancy, and it is unclear as to whether tenants received notice of the development. The full impact of the Sign upon the Mayfair residents is therefore unknown.

- [23] Regarding the recommended condition that the Sign be de-energized from 10 p.m. to 6 a.m., he explained that this range was determined based upon consideration of impacts upon residents in residential neighbourhoods, as well as signs located near schools. He was not sure whether requiring de-energization from 11 p.m. instead of 10 p.m. would make a difference upon these impacts.
- [24] Upon questioning by the Board about potential safety benefits of the Sign, he stated that the Jasper Avenue area is undergoing revitalization and that includes providing sufficient streetlights in the area. In his view, if Council had intended for lighting to be provided by signage, they would have made that clear.
- [25] He reviewed the photographs included in Exhibit A and confirmed that the residential units appear to be setback somewhat further than the lower commercial floor, but he was unclear as to the exact setback. He agreed that the Sign would impact the residential units facing north and east.

c) *Rebuttal of the Appellant*

- [26] Regarding the issue of roof top signs exceeding the maximum Height for Digital Signs, Mr. Murphy stated that this issue was not specifically discussed with the City when maximum Height figures were being evaluated. Referring to section 59.2(15) from the Zoning Bylaw, he noted that the prohibition against Minor Digital Off-premises Roof Signs was passed on March 14, 2012, whereas the provision restricting the maximum Height of a Freestanding Off-premises Sign was passed on October 11, 2011.
- [27] He noted that the condition recommending de-energization between 10 p.m. to 6 a.m. was meant for residential neighbourhoods. The subject Sign is located on Jasper Avenue in the downtown core.
- [28] Finally, Mr. Murphy noted that he is currently working on a file with City Council regarding Jasper Avenue revitalization. There is indeed a plan to improve lighting on Jasper Avenue; however, implementation and construction has been delayed for two years. With that in mind, it would seem appropriate to approve this renewal application for a period of three years.

Decision

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

- 1) The Minor Digital Off-premises permit is to be approved for a period of up to **three years**.
- 2) The proposed Roof mounted Minor Digital Off-premises Sign shall comply with the approved plans submitted.
- 3) The proposed Roof mounted Minor Digital Off-premises shall be de-energized daily between **12:00 a.m. (Midnight) to 6:00 a.m.**
- 4) The 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))
- 5) The proposed freestanding Digital On-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:

1) Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, Transportation Services will require a safety review of the sign prior to responding to the application.

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

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

- 1) Section 59.2(15) is waived to permit the subject Minor Digital Off-premises Sign to remain as a Roof Sign.
- 2) Section 59.2(3) is waived to permit the subject Minor Digital Off-premises Sign to be located such that Sign illumination may project onto surrounding residential premises.
- 3) Section 59F.3(6)(b) is varied to allow a deficiency of 1.75 metres, for a total Sign Height of 9.75 metres instead of the maximum allowable 8.0 metres.
- 4) Section 59F.3(6)(e) is varied to allow a deficiency of 30 metres, for a total separation distance of 70 metres instead of the required 100 metres.
- 5) Section 59F.3(4)(h) is waived to permit the structural elements of the subject Minor Digital Off-premises Sign to not be concealed from view.

Reasons for Decision

[31] Minor Digital Off-Premises signs are a Discretionary use in the JAMSC zone.

[32] The Board accepts that this is a renewal application for a Sign that had a lawful permit issued by this Board in December 2011 and that the sign has existed since that time without known complaints.

[33] The Board notes the following two changes in zoning requirements from the previous Board's decision:

- a) Section 59.2(15) now prohibits Minor Digital signs from being roof signs, and
- b) Section 59.2(3) now prohibits projection of light rays onto surrounding residential uses.

[34] In granting the waiver to Section 59.2(15), the Board notes the Appellant's contention that the subject Sign is mounted on a superstructure, much like a Free-standing Sign. The Board therefore notes that the subject Sign can be considered under Section 59F.3(2)(i), which states that "An application for the renewal of a Sign with a lawful permit existing at the time of the passage of this Bylaw will not be refused for the sole reason that it does not comply with development regulations of this Bylaw".

[35] In granting the waiver to Section 59.2(3), The Board accepts the Appellant's contention that:

- a) A certain amount of light pollution is normal in city core areas;
- b) The subject development pre-dates the residential development;
- c) The subject Sign is directed toward vehicular traffic, not the residential development;
- d) The subject Sign is controlled by technology that dims relative to ambient light conditions; and
- e) The condition to de-energize the Sign from 12:00 a.m. midnight to 6:00 a.m. addresses some of the concerns regarding light projection onto residential uses.

[36] The Board notes that no complaints were received with respect to the subject Sign, nor did the Board receive any letters of opposition regarding this renewal application from surrounding property owners in the 60 metre notification area. Further, the limitation of this approval to a three-year permit rather than the typical five years provides an opportunity for affected persons to come forward during this three year period to express any concerns.

[37] Finally, the Board notes that the Jasper Avenue commercial main street area is a high density, high traffic area in which Sign activity is common, both on-premises and off-premises.

[38] All other variances granted under this appeal are identical to those previously granted by this Board in 2011.

[39] Based on the foregoing, the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Ms. A. Lund, Mr. J. Kindrake, Mr. L. Pratt, Ms. N. Hack

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.