

Edmonton Subdivision and Development Appeal Board

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Date: June 5, 2015
Project Number: 131820679-003
File Number: SDAB-D-15-097

Notice of Decision

This appeal dated April 23, 2015, from the decision of the Development Authority for permission to:

extend the duration of a Freestanding Minor Digital Off-premises Sign (10.37m x 3.08m) double sided facing east/west

on Plan 5825NY Lot B, located at 10730 - 99 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 21, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed outside of the allowable 14 day appeal period, pursuant to the requirements of the *Municipal Government Act* (MGA).

The Board heard from Mr. B. Katz, the Appellant, who provided the following information with regard to the timing of filing the appeal:

1. He provided "Exhibit A" which contained copies of documents relevant to the late filing issue as well as a letter dated May 15, 2015, outlining timelines. The package included the August 20, 2014, application, a cover letter and a cheque to cover the fee, all with the same Calgary mailing address.
2. As per Section 686(1) of the MGA, the filing requirement runs from the time the Appellant was first notified of the decision.
3. The cheque was returned to the Applicant at the Calgary address as it was made out for an incorrect amount.
4. Bill Co's registered office is in Calgary but the decision was sent to an address in Edmonton.
5. After several requests Mr. Katz was first notified of the reasons for refusal via an e-mail dated April 17, 2015.
6. The appeal was filed on April 23, 2015, within 14 days from April 17, 2015.

The Board then heard from Mr. S. Ahuja, representing the City of Edmonton Sustainable Development Department, who made the following points regarding the late filing:

1. He explained there are two addresses for the Appellant in the City of Edmonton's POSSE system.
2. The prior application which covered this development had an Edmonton mailing address. Other applications have also used the Edmonton mailing address.
3. Cheques are returned to the Calgary address by a different City Department.
4. There is no information to believe that the Appellant received notice of the decision any earlier than the email dated April 17, 2015.

In rebuttal Mr. B. Katz made the following points:

1. He had sent the City a separate request for a change of address prior to this application.
2. Other applications are being sent to him at the Calgary mailing address.

DECISION: "that the Board assumes jurisdiction."

REASONS FOR DECISION:

The Board finds the following:

1. The Board accepts the Appellant's position that the City of Edmonton ought to have known, based on various correspondences, that the Appellant's mailing address is 1456 Richland Rd. NE, Calgary, Alberta.
2. The Development Officer confirmed that the City has two mailing addresses on file for this applicant and that the correspondence with respect to the decision was sent to the Edmonton mailing address, not the Calgary mailing address.
3. Both parties agreed that the applicant first received notice of the decision on April 17, 2015.
4. The Board finds that this appeal, filed on April 23, 2015, is within the allowable 14 day appeal period, pursuant to the requirements of Section 686(1) of the MGA.

The Board heard an appeal of the decision of the Development Authority to refuse an application to extend the duration of a Freestanding Minor Digital Off-premises Sign (10.37m x 3.08m) double sided facing east/west located at 10730 - 99 Street NW. The subject site is zoned CB2 General Business Zone. The site is within the Boyle Street/McCauley Area Redevelopment Plan and the Pedestrian Commercial Shopping Street Overlay.

The development permit was refused as the proposed Sign obscures a driver's decision point, encroaches into the road-right-of way (rear lane), does not meet the minimum nominal height clearance requirement and exceeds the maximum allowable Height.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Officer dated May 15, 2015.
- A written submission from the Appellant dated May 18, 2015 and a photograph dated May 21, 2015.
- A memorandum from the City of Edmonton Transportation Services Department (Transportation Services) dated March 10, 2015.
- A copy of the Boyle Street / McCauley Area Redevelopment Plan.

The Board heard from the Appellant, Mr. B. Katz, who provided the following information:

1. He referred to his letter of May 18, 2015, which was presented as evidence.
2. He advised that the subject property has had a billboard on the site for a very long time.
3. In 2013, a 10' by 34' Digital Sign was approved with no safety concerns.
4. The Edmonton Zoning Bylaw has not changed since the original decision was made by the previous Development Officer.
5. The Sign is not in close proximity to a residential zone – only to other commercial properties.
6. The original plans were approved in 2013 and he emphasized that the plans for this application were the same.
7. He referred to Section 645 of the MGA which requires the City of Edmonton to provide written notice regarding non-compliance; no such letter has been received.
8. He advised the Board that under Section 645 of the MGA the non-compliance of the Sign with the plans, including the encroachment issue, was subject to enforcement through a stop order or an encroachment agreement. The reference to enforcement in the refusal is irrelevant and was designed to prejudice the panel against him.
9. He was frustrated by the application process: mailing to the wrong address, lack of diligence, fettering with respect to granting variances and throwing in the “kitchen sink”. All of these actions demonstrate bias on the part of the City of Edmonton.
10. He referred to Section 687(d) of the MGA which refers to the power of the Board to grant variances.
11. He referred the Board to TAB X of Exhibit “A” which contained a copy of the Development Officer’s decision with relevant points redacted.
12. He had received no submission from Transportation Services stating the rationale and details and only received a generic letter at the time of Refusal.
13. He presented a case, *Sihota v Edmonton (City)*, 2013 ABCA 43 (*Sihota*) contained in Tab W of “Exhibit A”. He felt that the doctrine of “issue estoppel” applied to this application. If the Development Authority has issued a development permit and there have been no changes to the Edmonton Zoning Bylaw, they cannot refuse to issue a new permit for the same development.
14. He summarized Paragraph 17 of *Sihota* which was intended to prevent re-litigation of the same issue.
15. He referred to Paragraph 19, Page 5 of *Sihota* where the court approved an appeal without sending it to the Board. Section 8 (a through d) was a test as it relates to the Board for this application. Where zoning and bylaws have not changed and issues have not changed the applicant can rely on getting the same decision in a subsequent case.

16. A static Sign has existed for decades and a Digital Sign has existed on the site for the last two years. There have been no safety issues and no complaints. The Board's test has been met.
17. Although this is a discretionary use, a similar Digital Sign application located at a busier intersection in the neighborhood (southwest corner of 101 Street and 107A Avenue) that is more prominent than this Sign, was approved. There is an issue of bias.

Mr. Katz provided the following responses to questions:

1. He was applying for a renewal prior to the expiry of the five year period due to the difficulty of dealing with unexpected demands from the City of Edmonton.
2. The application for variances must occur while an existing permit is still in place.
3. He did not provide physical details of the Sign as this is irrelevant. The application includes the same plans and is no different than the one previously made in 2013.
4. The five year limit as per *Sihota* was intended to get rid of grandfathering due to bylaw changes. The bylaw has not changed since the first application.
5. Five years is a fixed term and therefore gives his company some certainty. He wants to extend the certainty in respect of this development to 2020 instead of 2018.
6. He was not able to provide the 2013 approved permit or advise of the previous variances from the last application.
7. He confirmed that the March 10, 2015, correspondence from Transportation Services was received but it provided no details. He did write back requesting clarification but received no response.

The Board heard from Mr. S. Ahuja, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. All applications are treated in the same way and applications for renewal are treated as new applications.
2. He is not able to vary Height.
3. He was not sure why the Pedestrian Commercial Shopping Street Overlay was not considered in the first application regarding this Sign but he is required to follow it.
4. It is standard procedure to submit Digital Sign applications to Transportation Services although they were not consulted regarding the first application for the Sign.
5. He provided a copy of the first application, marked as Exhibit "B".
6. He presented a photo of the subject Sign, marked Exhibit "C".
7. After Transportation Services received the application they did a site inspection and determined the Sign encroached over the road right-of-way resulting in enforcement action being initiated. He provided a letter from the City of Edmonton Sustainable Development Department dated May 19, 2015, marked Exhibit "D" that referenced that enforcement action.
8. One of the reasons for refusal was the non-compliance with the regulations of Transportation Services.

9. The other Digital Sign in the area, referenced by the Appellant, was refused by the Development Authority but was subsequently approved by the Subdivision Development Appeal Board. He feels that this shows that the Development Authority is consistent in the application of the *Edmonton Zoning Bylaw* to these Signs.

Mr. Ahuja provided the following responses to questions:

1. The enforcement issues referred to by the Appellant were simply added as a note to his decision and did not form one of the reasons for refusal.
2. As per Schedule 59E.3(5)(c)(ii) of the *Edmonton Zoning Bylaw*, a freestanding Minor Digital Off-premises Sign such as this one is to have a maximum Sign Area of 20 square metres; he had overlooked this in his reason for refusal.
3. The Sign interferes with drivers' sight lines based on the "cone of vision" requirements of Transportation Services.
4. The Sign is not located completely within the property which is in contravention of Section 59.2(12) of the *Edmonton Zoning Bylaw*. An inspection by Transportation Services showed that it was encroaching on the road-right-of way (the lane).
5. At the time of the 2013 application the Sign, in its present form, did not exist.
6. Schedule 59E.3(5)(b) of the *Edmonton Zoning Bylaw* states that the maximum width of such Signs is to be 8 metres; this Sign is 10 metres wide. This was also something he missed when reviewing the application.
7. If the Sign were to be approved, variances would be required in width, Height and Sign Area as well as in respect to issues raised by Transportation Services.
8. The only discrepancy between the first application and this one is the physical location of the Sign on the property. The required variances were not reflected on the original Development Permit.
9. It took a long time to review this application because he had to obtain information which then had to be submitted to Transportation Services for their review.

The Board heard from Ms. A. Gelinas, representing the City of Edmonton Transportation Services Department (Transportation Services) who provided the following information:

1. In the past, Transportation Services only reviewed Digital Signs with animated media known as Major Digital Signs. The previous application was considered a Minor Digital Sign and therefore was not circulated to their department for comments. The Department has since changed its practice and reviews all Digital Signs that are close to roadways. The new application was reviewed by the Transportation Services who did a site visit and evaluated traffic activity at that location.
2. Signs have the potential to impact the roadway and users of the roadway.
3. She presented a document, marked Exhibit "E", entitled *Appendix A: Clearance Zones and Traffic Safety Study Requirements* which sets out the criteria they use for the review of Digital Signs near roadways based on a 20 degree clearance zone. A key factor in their analysis is how Digital Signs can impact driver decision points.
4. She referred to Section 59.2(2) of the *Edmonton Zoning Bylaw* which sets out the criteria in evaluating Digital Signs near roadways.

5. She referenced Section 59.2(11) of the *Edmonton Zoning Bylaw* which allows a Development Officer to attach conditions to a Sign permit to ensure compliance with regulations and mitigate any effect that a Sign may have on surrounding properties, including mitigating any safety concerns identified by Transportation Services near traffic conflict points.
6. The Sign is near the intersection of 99 Street and 107A Avenue which has a non-signalized pedestrian crossing. They conduct an analysis to determine pedestrian activity in an area when evaluating the impact of Digital Signs. This particular pedestrian crossing has markings painted on the roadway and a pedestrian crosswalk Sign.
7. The pedestrian crossing creates a driver decision point. The Digital Sign being applied for impacts the driver decision point and requires an evaluation.
8. No safety assessment had been submitted by the applicant with respect to the impact of the Sign. Transportation Services did not ask for a safety assessment as the application was being turned down on other grounds.
9. The other Digital Sign in the area, located on a roof top, was reviewed by Transportation Services and a safety assessment had been submitted which resulted in the Sign being relocated outside of the 20 degree cone of vision.
10. Transportation Services determined that the Sign encroaches onto the road right-of-way (rear lane) and they do not support private advertising on public road right-of-ways.
11. She submitted a document that was an extract from a consultant's report, marked Exhibit "F" that dealt with "best practices" for managing advertising within road right-of-ways. Recommendation #3 on page 23 of that report states that all road right-of-way advertising should be prohibited except in certain limited circumstances.
12. Transportation Services has a minimum nominal height requirement of 5.6 metres. The vertical clearance of the Sign being applied for is 4.95 metres above the road right-of-way and this is in conflict with their standard.
13. The issue of the impact of digital media on drivers is relatively new. The Transportation Association of Canada (TAC) released a report in March, 2015, regarding Digital Signs and road safety. That report used a similar "cone of vision" analysis to the one that Transportation Services uses. It is very definitive about a restricted zone where digital media should not be allowed near a roadway. They use a "cone of vision" of ten degrees.
14. Transportation Services reviewed the current application based on the TAC report. Exhibit "G" which shows their analysis using the ten degree "cone of vision". It shows that the east facing Sign still encroaches into the cone of vision of drivers. The west Sign does not encroach and would be considered less of a risk; however it is this part of the Sign that encroaches on the lane right-of-way.
15. The issue of encroachment on a road right-of-way is outside of the *Edmonton Zoning Bylaw*.
16. They treat the five year renewal period for Digital Signs as an opportunity to monitor the situation. They look at what is happening on the roadway and use current "best practices" such as the TAC guidelines.

Ms. Gelinas provided the following responses to questions:

1. Counts and surveys at this location have not yet been completed.

2. There have been no complaints regarding the existing Sign.
3. Digital Signs are more likely to distract drivers than static Signs.
4. Transportation Services have not yet incorporated the TAC guidelines but she wanted to highlight that standards are changing and to show how TAC guidelines would impact this application.
5. She was unaware of the Appellant's request for further information regarding this application.
6. The Transportation Bylaw is in the process of being updated and applicants are expected to abide by the standards currently in effect.
7. The 20 degree "cone of vision" as shown in Exhibit "E" was used to evaluate this application. This standard has been used for evaluating all Major and Minor Digital Sign applications for about 1 ½ years. These requirements, as they apply to Minor Digital Signs, have not yet been incorporated into the *Edmonton Zoning Bylaw*.
8. In the fall of 2014, the City of Edmonton provided a presentation of the new Sign application evaluation criteria to a number of stakeholders (Major Digital Sign applicants). She believed an information package was available to anyone who applied for Digital Signs.
9. She presented a photo, marked Exhibit "H", which showed the Digital Sign in relation to the pedestrian crossing Sign. She acknowledged that a driver would travel past the Digital Sign before he would see the crosswalk but stated that the driver must be able to make a decision to stop prior to arriving at the crosswalk.
10. She estimated that the distance from the Sign to the crosswalk was approximately 25 metres.
11. She used the criteria outlined in Section 59.2(2)(c) of the *Edmonton Zoning Bylaw* to determine whether a Sign conflicts with a driver's decision point. There are no strict measures to determine this conflict. The cone analysis is utilized and pedestrian crossings are taken into account as pedestrians are particularly vulnerable. They also consider competition between the Sign and sight lines as well as road configuration. This road is on a curve which impacts sight line distance.
12. The 5.6 metres nominal height clearance requirement is based on a requirement by Alberta Transportation and provides a clearance zone for tall vehicles. Most freeways and bridges are required to meet that height which only applies over road right-of-ways, not over private property. This requirement is not found in the *Edmonton Zoning Bylaw*.

In rebuttal Mr. Katz made the following points:

1. He reiterated that he did not receive any information of the changes to the guidelines as presented and was unaware of these guidelines until this hearing. This is the reason as to why he made an early application.
2. In his opinion, most of the new information heard was irrelevant and the Board is governed by the *MGA* and the *Edmonton Zoning Bylaw*, not changes to policy.
3. He had not been invited to be part of any public consultation process for Major or Minor Digital Signs.
4. The 5.6 metres height clearance requirement only applies within the road right-of-way. The proposed Sign is within the property line based on the approved plans provided.

5. He stated that this sign is in the CB2 General Business Zone, therefore, Schedule 59F is the correct schedule not 59E.
6. He referred the Board to Page 3 of the original Development Permit (the note of variances granted). He does not accept that a 5 year permit is an opportunity for the City of Edmonton to correct errors and prior decisions have relevance once complete.
7. He advised that documents presented by Transportation Services cited third party reports and reiterated the correspondence from Transportation Services dated March 10, 2015, did not demonstrate the Sign was unsafe.
8. He confirmed that the March 10, 2015, correspondence was received directly from the City of Edmonton Transportation Services Department and not the City of Edmonton Sustainable Development Department.
9. He advised the Board that he made several attempts to coordinate with the City of Edmonton in a timely manner but was not successful.
10. Other studies exist which would refute the conclusions brought forward today by the City of Edmonton.
11. There was no evidence that the Pedestrian Commercial Shopping Street Overlay was not considered in the original application.
12. If the Board considers the Sign to be unsafe it should consider only the East facing Sign as per Exhibit "G".

Decision:

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 development permit expires on June 4, 2020.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. Pursuant to Section 819.3(13)(a), a variance of 2 metres was granted to the maximum allowable Height requirement of 6 metres.
2. Pursuant to Schedule 59E.3(5)(b), a variance of 2.37 metres was granted to the maximum allowable Sign width requirement of 8 metres.
3. Pursuant to Schedule 59E.3(5)(c)(ii), a variance of 11.94 metres square was granted to the maximum allowable Sign Area requirement of 20 square metres.

Reasons for Decision:

The Board finds the following:

1. The proposed development, a Minor Digital Off-premises Sign is a Discretionary Use in the CB2 General Business Zone, Section 340.3(42).
2. The Board has not considered any encroachment concerns in its findings as no specific evidence was provide to quantify any encroachment which may be in any event an enforcement issue. Enforcement issues are not within the Board's purview.
3. The Board has determined that "issue estoppel" does not apply within this application. The five year renewal period is designed to allow Digital Signs to be periodically assessed in a changing environment including changing policies and evidence related to safety and planning impact.
4. The Board recognizes the proposed Sign exceeds the maximum allowable Height, maximum allowable Width, and the maximum allowable Sign Area but notes that this development is located within a commercial area and it is not within proximity to any residential zone. Based on the submitted photographic evidence, the Board finds that the Sign is compatible with the surrounding area.
5. A Sign has existed on this Site for several years and the subject Freestanding Minor Digital Off-premises Sign has existed since 2013. The Board notes that no complaints or traffic incidents have been reported during the existence of this Sign.
6. The Board heard that the standards for evaluating Digital Signs and their impact on driver decision points are evolving. For example, Transportation Services used to evaluate only Major Digital Signs, which have video images. Now Minor Digital Signs are evaluated, which only have static images. Another example is the March 2015 report by the Transportation Association of Canada (TAC) regarding best practices for Digital Signs. TAC recommends somewhat different criteria for evaluating these signs than those used by Transportation Services. Using these criteria to evaluate this development permit application, this Digital Sign does not impact west bound drivers and only minimally impacts east bound drivers as shown in Exhibit "G". It is noted that east bound drivers will encounter the crosswalk before the sign, so the sign will be of less significant regarding decisions relating to the crosswalk.
7. Based on the evidence of Transportation Services, particularly the TAC recommendations, the Boards finds that the current sign does not violate any of the requirements of Section 59.2(2)a, b, c and d of the Zoning Bylaw. Given the City's evidence that their standards are currently in transition and the lack of complaints or reported incidents, the Board concludes there is no material or adverse impact. When this permit expires in five years, the Development Authority and Transportation Services will have the opportunity to re-evaluate the sign by the standards of the day to determine if a new development permit should be issued.
8. Regarding issues of compliance, such as not being located completely within the property or encroaching on a road right-of-way, nothing in this decision affects the City's ability to require compliance.
9. The Board notes there were no letters in opposition to the proposed development and no one appeared in opposition at the hearing.

10. Based on the above, it is the opinion of the Board, that the proposed development 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.

Important Information for 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 related 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.
(Refer to Section 5 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.)
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.

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

cc: City of Edmonton, Sustainable Development, Attn: S. Ahuja
City of Edmonton Transportation Services Department, Attn: A. Gelin

Edmonton Subdivision and Development Appeal Board

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Date: June 5, 2015
Project Number: 163179224-005
File Number: SDAB-D-15-098

Notice of Decision

This appeal dated April 22, 2015, from the decision of the Development Authority for permission to:

Construct an addition to an existing Single Detached House (partially covered deck 1.52m x 4.72m and 2.44m x 13.72m)

on Plan 1420824 Blk 13 Lot 11, located at 2724 - Wheaton Drive NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 21, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an addition to an existing Single Detached House (partially covered deck 1.52m x 4.72m and 2.44m x 13.72m) located at 2724 - Wheaton Drive NW. The subject site is zoned RSL Residential Small Lot Zone and is within the Windermere Area Structure Plan and the Windermere Neighbourhood Structure Plan.

The development permit was refused due to an excess in the maximum allowable total Site Coverage.

Prior to the hearing the following information was submitted to the Board:

- A revised plot plan and house plans dated April 24, 2015
- A written submission from the Development Officer dated May 12, 2015

The Board heard Cecile Biron, Peter Manget, and Mr. G. Braich who were representing the Appellant, Sunnyview Homes Ltd. They provided the following information:

1. They had originally applied for a larger deck but have now reduced the deck size by eliminating the western portion of the deck. The total site coverage is 47.73 percent compared to 51 percent in the original refused application.
2. The Appellants are requesting the uncovered deck in order to enjoy their backyard and the view of the pond.

The Appellants provided the following responses to questions:

1. There are currently no existing neighbours and the adjacent lot to the west is owned by their company, Sunnyview Homes.
2. They intend to build a fence along the rear lot line.
3. The proposed house abutting the rear of this property will most likely be designed with a 27 foot setback from its rear lot line to avoid possible sightline issues with the other neighbour's house.
4. They confirmed the size of the new addition is 1.837 metres by 8.44 metres.

The Board heard from Ms. F. Hetherington, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. She confirmed that she had received the revised plans. However, she did not have the authority to reconsider the new plans as the original Development Permit had been refused and the matter was now within the Board's jurisdiction.
2. The house was originally approved with a covered deck even though the total site coverage was 45.9 percent. The proposed deck extension was not shown on the original application.
3. The proposed deck will be 3.15 metres in height measured from the rear elevation of the house to the main floor. This deck is just for the main floor. The deck would be higher than any proposed fence at the rear of this lot.
4. There is a walk-out area from the basement into the rear yard.
5. She provided a copy, marked "Exhibit A" of the originally approved plot plan for the house which included the covered deck. She used this plot plan to point out the location of the proposed partially covered deck.

In rebuttal Ms. Biron made the following points:

1. She presented a letter with signatures of support for the proposed deck, marked "Exhibit B".
2. She reiterated that the requested variance is small.
3. The summer season is limited in length and the Appellants had to consider their own enjoyment.
4. Aesthetically the house would not look as good without this addition.

Ms. Hetherington declined the opportunity to respond to the new information presented.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is **REFUSED**.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RSL Residential Small Lot Zone.
2. The Board has based its decision on the revised plans received April 24, 2015.
3. The Board finds the addition of the partially covered Platform Structure will exceed the total maximum allowable Site Coverage by 18.06 square metres (2.73 percent).
4. Although the proposed development is located on the main floor of the Single Detached House, the Platform Structure is 3.15 metres in height measured from the rear elevation of the house. Sightlines from this deck will be considerably higher than a fence along the rear property line.
5. The Board accepts the submission of the Development Officer that the addition of the proposed development will create a massing effect and will increase the lack of privacy for the abutting property to the north.
6. The Board notes that the letter of support received included signatures from three home builders (one of which includes the Appellant) and encompasses seven neighbouring properties. However, the letter of support did not include any signatures from abutting property owners.
7. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Sustainable Development, Attn: Fiona Hetherington

Edmonton Subdivision and Development Appeal Board

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Date: June 5, 2015
Project Number: 157103831-007
File Number: SDAB-D-15-099

Notice of Decision

This appeal dated April 22, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to 50 Dwellings of Row Housing with attached Garages (revised main floor elevations for Blocks A, B and I only)

on Plan 1325175 Blk 16 Lot 1, located at 1480 - Watt Drive SW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 21, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations to 50 Dwellings of Row Housing with attached Garages (revised main floor elevations for Blocks A, B and I only) located at 1480 - Watt Drive SW. The subject site is zoned RF5 Row Housing Zone and is within the Southeast Area Structure Plan and the Walker Neighbourhood Structure Plan. The development permit application was refused because of an excess in the maximum number of Storeys for Building A, B and I.

Prior to the hearing the following information was submitted to the Board:

- Written submission from the Development Officer, dated April 23, 2015

The Board heard from the Appellant, Mr. Gardner, representing Planworks Architecture, who provided the following information to the Board:

1. Mr. Gardner submitted revised elevation drawings marked Exhibit "A" to illustrate a more accurate representation of the required variance.

2. The front elevations of the proposed 50 unit development face onto neighbouring developments and all of the vehicular services are located behind the proposed buildings inside the subject site.
3. All of the buildings will be connected by pedestrian walkways.
4. The subject site slopes east to west and north to south along the property line and the road.
5. This sloping creates a challenge when grading the site and the original grading plan had to be revised as a result. A concrete swale will also be installed to address some of the drainage problems.
6. The land slopes more steeply from the front to back of the site.
7. All nine buildings comply with the overall building height requirements. However the revision to the grading plan and the resulting increase in grade elevation has resulted in three buildings (A, B and I) now deemed to be over the basement height.
8. Even though the Development Officer used an alternate method to calculate grade, these three buildings are considered three storey buildings and exceed the maximum allowable by a half storey.
9. To mitigate the elevation of the main floor, the entry level was lowered with risers to improve the aesthetics of the buildings from the streetscape.
10. When the proposed amendments to the *Edmonton Zoning Bylaw* for the RF5 Zone are approved, these three buildings will be fully compliant.
11. It was clarified that buildings A, B and I are sited closer to the front of the site, along Watt Drive SW and the overall height is not significantly different from the other six buildings located to the rear of the site.

The Board then heard from Mr. Trevor Illingworth, representing the Sustainable Development Department, who provided the following information:

1. A development permit was previously approved and issued for all nine of the proposed buildings on this site.
2. However, a revision to the grading plan resulted in three of the nine buildings exceeding the maximum number of storeys by a half storey.
3. He did not have the authority to vary height and he was therefore forced to refuse the development permit application. However, he advised the Board that he would have approved this development application if he could have because of proposed amendments to the *Edmonton Zoning Bylaw* that will be considered by Council later this year.
4. He is supportive of the revision because none of the proposed buildings will exceed the maximum allowable height requirement of 10 metres.
5. The proposed increase in the height of the main floor of these buildings will not impact any of the other buildings on the site.

Mr. Gardner indicated that he had nothing further to add in rebuttal.

Decision:

that the appeal be ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

- An excess of a Half Storey in the maximum number of Storeys for Buildings A, B and I.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF5 Row Housing Zone.
2. Section 160.4(3) of the *Edmonton Zoning Bylaw* states that the maximum Height shall not exceed 10.0 metres or 2 ½ Storeys.
3. The Board has granted a variance of a Half Storey in the maximum number of Storeys for Buildings A, B and I for the following reasons:
 - a) Based on the evidence provided, the Appellant has addressed drainage design limitations on the subject site by revising the lot grading plan which has resulted in an increase in the height of the main floor for Buildings A, B and I.
 - b) Buildings A, B, and I do not exceed the maximum allowable Height requirement of 10.0 metres pursuant to Section 160.4(3) of the *Edmonton Zoning Bylaw* and are characteristic of the other six buildings approved on the subject site.
 - c) The three buildings are located at the front of the subject site along Watt Drive SW and the Appellant has incorporated design features at the front of the buildings to ensure the privacy of neighbouring property owners and to improve the aesthetics of the buildings from the streetscape.
 - d) Based on evidence provided by the Development Officer, the proposed revisions would have been approved if discretion to vary the maximum number of Storeys was provided.
4. Based on the above, it is the opinion of the Board, that the proposed development 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.

Important Information for 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:
 - f) 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,
 - g) the requirements of the *Alberta Safety Codes Act*,
 - h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - i) the requirements of any other appropriate federal, provincial or municipal legislation,

- j) 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.

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

c.c. City of Edmonton, Sustainable Development, Attn: Trevor Illingworth
Mr. Enos
Mr. Durrance