

Date: December 3, 2015  
Project Number: 176393028-002  
File Number: SDAB-D-15-270

### Notice of Decision

This appeal dated October 26, 2015, from the decision of the Development Authority for permission to:

Construct an addition to a Single Detached House (Extending the front veranda 0.35m x 8.27m) existing without permits

on Plan 426HW Blk 6A Lot F, located at 9040 - 92 Street NW, was heard by the Subdivision and Development Appeal Board on November 18, 2015.

#### 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*, RSA 2000, c M-26.

The subject Site is zoned RF3 Small Scale Infill Development Zone.

The development was approved with conditions with a variance granted in the minimum required distance from the Front Lot Line. The approved permit was subsequently appealed by an adjacent property owner.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A photograph submitted by the Appellant at the time of appeal on October 26, 2015;
- Development Permit application information from the Development Officer;
- A written submission from the Development Officer dated November 17, 2015;
- A written submission from the Respondent dated November 13, 2015; and
- One online response in support of the development from an affected property owner.

The Board heard from the Appellant, Mr. M. Reid, who provided the following information.

1. He expressed concern with the various interactions he has had with the developers since day one.

2. In March, there were some disputes regarding garbage in the trees and flowerbeds, and damage to his fence and compost. He doesn't agree with the statements made in the Respondent's submission regarding these matters.
3. There have been various trespassing issues which he had attempted to discuss with the developer and which fell on deaf ears.
4. He referred the Board to the photo he had submitted which shows how the veranda cuts off the view from his dining room window.
5. He has concerns that the veranda will have an impact on the value of his property and will impact his home in general.
6. No efforts were made to consult with neighbours during the initial development of the home and he did not receive any communication from anyone until he contacted the City. Had there been an attempt made prior to development there might have been consensus on a mutually acceptable design.
7. He felt there should be a penalty applied to the error in construction regarding the pillar locations.
8. No notices of the initial development were received; the only notice he received was regarding the variance that was granted.

The Presiding Officer explained that the public consultation requirement only applies when there is a variance under the Mature Neighbourhood Overlay. That requirement was only identified by the City of Edmonton Sustainable Development Department shortly before the consultation process took place.

The Board heard from Ms. F. Hamilton, representing the City of Edmonton Sustainable Development Department, who provided the following information in response to questions:

1. She was in receipt of several letters from neighbouring owners with no objection to the veranda extension. The owner to the South (the Appellant) was not in support. The Development Officer treated these responses as a partial consultation and relaxed the full consultation process.
2. The veranda is allowed to project 5.76 metres into the Front Setback and is only extended from the original plan by .35 metres (approximately 1 foot). With that projection allowance, the veranda sits at 5.23 metres.
3. In the original permit application, which was received in December 2014, the veranda was approved at 1.52 metres. The new application was received on August 18, 2015, and approved on October 6, 2015, with the existing constructed veranda at 1.87 metres.
4. Through the Presiding Officer, the definition of veranda was discussed in relation to Section 814.3(6) of the *Edmonton Zoning Bylaw* as to whether the veranda is considered a platform structure. Ms. Hamilton did not use Section 814.3(6) of the *Edmonton Zoning Bylaw* when considering this application because the veranda is covered, so she felt it does not fall under the definition of Platform Structure.
5. The front wall of the house is compliant in terms of the required Setback.
6. She granted a variance to Section 814.3(1) of the *Edmonton Zoning Bylaw* since this veranda has the opportunity to be enclosed into a sunroom under another permit.

The Board heard from Mr. I. Gafur, representing the Respondent, Zakscon Inc., who provided the following information:

1. He admits an error was made in the construction of the veranda and that was the reason for requesting a variance.
2. He reviewed the requirements of Section 814.3(6) of the *Edmonton Zoning Bylaw*.
3. He had no further comments.

In rebuttal, Mr. Reid made the following points:

1. He agrees with the Development Officer and her definition of veranda.
2. He reiterated it is the cover and post of the veranda that blocks his lighting. He opined that this obstruction would be lessened if the deck had been built in compliance with the Front Setback requirement.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED in accordance with the plans approved on October 6, 2015.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. Section 814.3(6) of the *Edmonton Zoning Bylaw* states:

Notwithstanding Section 44 of this Bylaw, a single Storey Platform Structure may project a maximum of 2.0 m into a Front Setback from the first Storey of a Dwelling, provided that a minimum of 3.0 m is maintained between the Front Lot Line and the Platform Structure.

The Board finds that this Section permits the veranda structure to remain as built without the requirement for a variance.

3. The Board finds that the definition of Platform Structure in Section 6.1(74) of the *Edmonton Zoning Bylaw* provides a non-exhaustive list of the types of development that can be included. Verandas are not defined in the *Edmonton Zoning Bylaw*. However, the Board finds that the proposed covered veranda falls within the definition of a single-Storey Platform Structure because it projects from the wall of a building, and may also be surrounded by guardrails or parapets as per Section 6.1(74).
4. In the event that this interpretation is incorrect, the Board would grant the 0.53 metre variance in the Front Yard Setback as identified by the Development Officer, for the following reasons:

- a. While the Board concedes the Appellant's concern that the proposed development will have a modifying effect on the amount of light and the view from his property, there is nothing in the *Edmonton Zoning Bylaw* that guarantees the preservation of light or views from the construction of developments that fully comply with the Bylaw requirements.
  - b. Any adverse impact on the Appellant's property comes from the new building itself, not the 0.53 meter extension of the veranda, and the Board finds that the veranda is consistent with the general purpose of the Mature Neighbourhood Overlay in enhancing the pedestrian-friendly design of the streetscape.
  - c. All of the affected parties within 60 metres were notified of the appeal and no one, other than the Appellant, appeared in opposition. Four adjacent property owners supported the proposed development.
5. The Board notes that the community consultation which was conducted may not be necessary in the event the Board is correct in finding that no variance is required.
  6. The Board is satisfied 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 5<sup>th</sup> 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*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
  - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
  - 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 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 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. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

Date: December 3, 2015  
Project Number: 178546662-001  
File Number: SDAB-D-15-271

Notice of Decision

This appeal dated October 19, 2015, from the decision of the Development Authority for permission to:

Change the Use of a General Retail Store to Minor Alcohol Sales (LIQUOR SHOPPE)

on Plan 7923176 Blk 6 Lot A, located at 10611 Kingsway NW, was heard by the Subdivision and Development Appeal Board on November 18, 2015.

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*, RSA 2000, c M-26.

The subject Site is zoned CB2 General Business Zone and is within the Central McDougall / Queen Mary Park Area Redevelopment Plan.

The development permit was refused due to a deficiency in the minimum required Separation Distance to a Public Park in the vicinity.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A copy of an Alcohol Sales Map from the Development Officer;
- A copy of the Development Officer's written submission dated October 21, 2015;
- A copy of the Central McDougall / Queen Mary Park Area Redevelopment Plan; and
- A written submission from the Appellant received on November 18, 2015.

The Board heard from Mr. R. Noce, legal counsel for the Appellant and Mr. G. Garg, the Appellant. Mr. Noce provided the following information:

1. The only objection regarding the proposed development is the distance to Victoria Cross Memorial Park. He submitted that had the 100 metre threshold been met, the Development Officer would have exercised his discretion and granted the Development Permit.

2. He provided photographic evidence of the small, pie shaped park nestled between well-utilized arterial roadways. The photographs provided different views from the park, showing that a majority of the neighbouring properties were commercial developments (both vacant and occupied) and parking lots, with just a small number of residential units being visible to the southwest of the park.
3. The proposed development is not visible from the park nor can the park be seen from the sidewalk outside the proposed development, and the alphabetically listed photo exhibits show that the park was not utilized at any time that these pictures were taken. There is no evidence of pedestrian activity in or around the park, and it is not illuminated in the evenings, which further discourages recreational activities on the Site. The location of the park provides little opportunity for children or other people to utilize the park. A map of the park from Google Maps provides further evidence of the inaccessibility of the park to pedestrians.
4. The layout of the building in which the proposed development would reside provides for a physical barrier between the liquor store and the park.
5. The Appellant has operated a liquor store for the past five years one block away from the proposed development. It is now closed and the permit has been cancelled. In the five years that the now-closed liquor store was in operation, there were no police, community league, bylaw or neighbourhood complaints.
6. The only difference between the proposed liquor store and the previously operated liquor store is that the new development would be 70 metres closer to the park. No one could suggest that moving 70 metres closer would change the dynamics of the neighbourhood. The Board can exercise its discretion to approve the proposed development, notwithstanding that the boundaries of the Site in which the proposed development is located is 85.6 metres from the Site boundary to the park.
7. The 100 metre rule does not apply to CSC Shopping Centre Zone developments that have an area greater than 2 hectares. Since Kingsway Mall is 27 metres from the park, a liquor store could operate out of that mall. If the Board denies this appeal there could still be a liquor store within a 100 metre distance of the park.
8. The Appellant closed the previous liquor store because of landlord and tenant issues. The closure did not arise from community objections or the operation of the business.
9. The reason for applying the 100 metre distance was to eliminate alcohol consumption in the park; however, there is no evidence of that occurring. Indeed, since there is a Moxie's restaurant across the street from the park, people could legally consume liquor in that business and still end up in the park whilst intoxicated.
10. The proposed development would be in a professional building and would be managed professionally.
11. No one has appeared in opposition to the development and there was no opposition at all from the neighbourhood or the community.
12. Should the Board decline to exercise its variance powers, evidence would need to be produced to demonstrate that the proposed development would have an undue impact upon neighbouring properties. However, the proposed development would actually have a positive impact. The previous liquor store was within a block of the proposed development and was well used and enjoyed by the neighbourhood. There was no evidence of any negative impact on land value or that it materially affected the use and

enjoyment of neighbours. The Board must have good reasons not to exercise its discretion.

13. Council's intent was to allow discretion when considering developments for liquor stores near parks and schools. He gave a history of the intent of the 100 metre separation rule going back to 1993 when liquor stores became privatized.

Mr. Noce provided the following responses to questions:

1. The park is zoned AP Public Parks Zone and there are benches in the park.
2. There are a small number of residential units to the southwest of the park.
3. The nearest liquor store is 551 metres away.
4. The previous liquor store operated by the Appellant is fully closed and the permit has been cancelled.
5. The Appellant admitted a variance was required.

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

1. His major concern was the lack of the 100 metre separation distance between the proposed Site and the nearest park.
2. His second concern was regarding the potential for a negative impact on the community surrounding the liquor store, and he had concerns regarding alcohol being consumed in the park.
3. The Site is a pocket park and may be re-developed as part of a future urban park plan. He had not been provided with sufficient justification to consider granting the variance.

Mr. Shah provided the following responses to questions:

1. He conceded this was not an additional liquor store to the area, just a replacement.
2. He had received no specific information from the Parks Department as to how this park may be redeveloped in the future.
3. He could have granted a variance regarding the 100 metre separation distance but did not do so because of the potential impact to the community.
4. He confirmed that the Development Permit for the liquor store that previously operated a block away had been cancelled.
5. The measurement of 85.6 metres was from Site to Site and he had not carried out a measurement from the park to the actual unit on the Site where the liquor store would be operated.

In rebuttal, Mr. Noce made the following points:

1. He read from page 18 of the Queen Mary Park Area Redevelopment Plan and suggested that the proposed development would contribute to a good and viable blend of business and community. The Appellant has a history of good operation.



2. The measurement from the door of the proposed liquor store to the nearest point of the park exceeded 100 metres, but he was not relying on that argument because the Bylaw uses a Site to Site separation distance for measurements.
3. The measurement for separation distances between liquor stores is door-to-door.

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.

In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. A variance of 14.4 metres to allow the proposed development the boundaries of which are located 85.6 metres from the boundaries of the Victoria Cross Memorial Park, which is zoned AP Public Parks Zone.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Discretionary Use in the CB2 General Business Zone.
2. While the Board acknowledges the Development Officer's decision is a precise interpretation of the separation distance requirement under the *Edmonton Zoning Bylaw*, the Board is not convinced that there is any major planning-related concern regarding the pocket park, which contains no recreational facilities or equipment and is essentially a ceremonial park.
3. The Board acknowledges that the distance from the boundary of the park to the boundary of the entire building in which the Minor Alcohol Sales Use would be located is deficient by 14.4 metres from the required 100 metres separation. However, the Board further notes that the distance from the boundary of the park to the closest point of the actual Minor Alcohol Sales Use within the entire building is most likely in excess of 100 metres.
4. The Board notes that no one from the Community League or any other affected party has appeared in opposition to the proposed development.
5. The Board further notes that the proposed development is in fact a re-location of a Minor Alcohol Sales Use in close proximity to the new location and there likely will not be any further impact on the community.
6. The Board is satisfied that, based on the above reasons, 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.

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  - h) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
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4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning 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.
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Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

Date: December 3, 2015  
Project Number: 178074263-001  
File Number: SDAB-D-15-272

### Notice of Decision

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

Construct a Minor Digital On-Premises Freestanding Sign, two-sided north/south facing (Air Liquide Canada Inc.)

on Plan 2214HW Blk F Lot 3, located at 7315 - 50 Street NW, was heard by the Subdivision and Development Appeal Board on November 18, 2015.

#### 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*, RSA 2000, c M-26.

The subject Site is zoned IB Industrial Business Zone and is within the Edmonton – Strathcona County Joint Planning Study Area Secondary, Garage and Garden Suites Overlay (the “Overlay”).

The development permit was refused due to a deficiency in separation between an existing Freestanding On-premises Sign and the proposed Freestanding Minor Digital On-premises Sign.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A written submission received from the Development Officer dated November 2, 2015; and
- A copy of Bylaw 14750 including Schedule A, the Overlay.

The Board heard from the Mr. P. McGie of Verbalized Signs representing the Appellant, Air Liquide Canada, who provided the following information:

1. He works for the sign company and is representing the Appellant as the Air Liquide personnel could not be present at the hearing.

2. The City of Edmonton Transportation Services Department had approved the Sign with conditions, such as the inclusion of a dimming switch, all of which the Appellant planned to fulfil.
3. Up until the Sign was denied, the Appellant had been under the impression that the development would be allowed. He also thought that the deficiency in the Separation Distance was closer to 10 metres, whereas the City indicated it was 17 metres.
4. He indicated that the landlord would not consent to having any additional paneling added to the existing Freestanding Sign on the lot and the adjacent lot owner did not want a Sign on their property.
5. The existing Sign on the lot is not digital and the closest digital sign is actually within the distance that they are allowed, between 48 and 49 metres away from the proposed Sign Site.
6. He had prepared a list of other Signs on Gateway Boulevard that he thought were analogous to the development under appeal, but did not have the list with him at the hearing.
7. The landlord and neighbours did not oppose the proposed development.

Mr. McGie provided the following responses to questions:

1. Air Liquide has no advertising on the landlord's Sign and there is no space to add any. The Landlord does not want to add any additional space to the existing Sign as he wants to preserve its aesthetics.
2. The Landlord will not allow Fascia Signs on the building. As a result, Air Liquide, who had just moved in, has no signage indicating its current tenancy.
3. The Landlord is in agreement with a new Digital Sign being installed at the proposed location. Air Liquide wants a Digital Sign to showcase its products.
4. The proposed sign is 6'-3" by 3'-8" and is 20 feet in Height. Mr. McGie indicated that the proposed Sign is not that big, relative to other Digital Signs.
5. He confirmed the Sign would be advertising Air Liquide products only. It would have no videos, would change once every minute and would advertise hiring notices as well as different tradespeople working for Air Liquide.

The Board heard from Mr. J. Folkman and Mr. S. Ahuja, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. They found no hardship with respect to the subject property.
2. Any hardship was vis-à-vis the Applicant and the Landlord.
3. The only other Digital Sign in the vicinity was across the street; all the rest are similar to the Landlord's Sign being a Freestanding Fascia Sign less than 9 feet in Height.
4. The variance was not granted as they were concerned with a proliferation of Signs in the area. The Sign would also be precedent setting. Every business or location within the vicinity would want or expect two signs on their properties.
5. There is a Digital Sign across the street, which can be viewed by traffic in both the northbound and southbound directions. The proposed development would be similar in Height and impact as that Digital Sign.

6. Digital Signs vis-à-vis other Digital Signs of less than 8 square metres in size do not have a minimum required separation distance.
7. The Development Officers did not find that the green space on the subject area or around the subject area mitigated the impact on the proliferation of Signs in the area. As such, they support maintaining the required minimum separation distance.
8. They confirmed that the City of Edmonton Transportation Services Department reviewed this Sign and had no issue with its impact on traffic.
9. They confirmed that the proposed development from Grade to the top of the Sign was 20 feet in Height.

In rebuttal, Mr. McGie made the following points:

1. The City's concern with respect to clutter is mitigated by the vegetation in between the existing sign, and the proposed sign site.
2. He indicated that he had been told by the City that, if adjacent landlords both wanted On-premise signs, they would be granted a variation allowing a separation distance of less than 45 metres.
3. They are unable to put a Fascia Sign on the building on the proposed Site as the windows are spaced too closely together.
4. Elsewhere in Edmonton, there are many precedents of Signs being separated from each other by less than 45 metre.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The deficiency of 16.9 metres in the required separation distance between the existing on-Site Freestanding Signs and the proposed on-Site Freestanding Sign is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The permit shall be approved for a term of not longer than 5 years, at which time the applicant shall apply for a new Development Permit for continued operation of the Sign.
2. That, should at any time, Transportation Services 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 Services.
3. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services 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.
4. The proposed Sign shall be constructed entirely within private property. No portion of the Sign shall encroach over/into road right-of-way.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Discretionary Use in the IB Industrial Business Zone.
2. The Board finds that the proposed Sign and the existing backlit acrylic panelled sign on the Site are so different in character and impact, as to mitigate the effect of reducing the separation distance.
3. The Board further notes the Appellant's contention that the 45 metre separation requirement applies only to Signs on the same Site, and that where Signs occur on adjoining Sites this 45 metre separation requirement would not apply.
4. The Board notes that there is only one other Digital Sign across the street from the proposed Sign and that the separation distances applicable to Digital Signs do not apply because the proposed Sign is under the 8 square metre area.
5. The Transportation Department reviewed and had no concerns related to the proposed sign.
6. The Board is satisfied that based on the above reasons, 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.

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  - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
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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 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.
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Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board