EDMONTON
TRIBUNALS
Subdivision & Development Appeal Board

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Date: November 18, 2016
Project Number: 224507305-001
File Number: SDAB-D-16-237

Notice of Decision

[1] The Subdivision and Development Appeal Board (the "Board") at a hearing on September 22, 2016, made and passed the following motion:

> That the appeal hearing be tabled to November 3, 2016.

[2] On November 3, 2016, the Board made and passed the following motion:

> That SDAB-D-16-237 be raised from the table.

[3] On November 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on August 26, 2016. The appeal concerned the decision of the Development Authority, issued on August 15, 2016 to refuse the following development:

> Install (1) Freestanding Minor Digital Off-premises Sign (6.1 metres by 3 metres facing east / west).

[4] The subject property is on Plan 1282RS Blk 11 Lot 125A, located at 10360 - 111 Street NW, within the DC1 (Bylaw 17595 – Area 2) Direct Development Control Provision. The 104 Avenue Corridor Area Redevelopment Plan applies to the subject property.

[5] The following documents were received and form part of the record:

- Copy of the Development Permit application with plans;
- Memorandum from the City of Edmonton Urban Transportation;
- Copy of the refused permit;
- Canada Post receipt confirming delivery of the refusal decision, signed and dated August 18, 2016;
- Development Authority's request for postponement, and decision of the Board granting the postponement, dated September 22, 2016;
- Development Officer's Written Submissions, dated September 15, 2016;
- Copy of the Board's 2010 decision, SDAB-D-10-090, as referenced by the Development Officer in his Written Submissions;

- Supporting Materials submitted by legal counsel for the Appellant, in addition to three pages of photographs received November 3, 2016;
- Supporting Materials submitted by legal counsel for the Development Authority;
- Two emails and one online response in opposition to the development.

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

- Exhibit "A" – *Love v Flagstaff (County) Subdivision and Development Appeal Board,* 2002 ABCA 292.

Preliminary Matters

[7] 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.

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

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

Summary of Hearing

i) Position of the Appellant, Pattison Outdoor Advertising

[10] The Appellant was represented by legal counsel, Mr. J. Murphy, Sr. ("Mr. Murphy"). He was accompanied by a representative from Pattison Outdoor Advertising, Mr. J. Murphy, Jr.

Background

[11] The subject Freestanding Minor Digital Off-premises Sign was first approved by a panel of this Board in May 2010 for a five year period. The Appellant subsequently experienced difficulties contacting the owner of the land on which the Sign is located, and in the interim, the permit lapsed in May 2015.

[12] On April 4, 2016, Bylaw 17595 was passed by City Council, which amended the DC1 Direct Development Control Provision in which the subject Sign is located. Under the amended Direct Development Control Provision ("DC1(17595 – Area 2)"), Minor Digital Off-premises Signs are a Listed Use under section 3(ll). However, section 8(e) states: "Major or Minor Digital Signs shall not be installed on a Freestanding Sign."

[13] Citing section 8(e), the Development Officer refused the development application, and provided the following reasons for refusal:

> The existing Minor Digital Off-premises Sign was approved by SDAB (File no. D-10-090) May 7, 2010 for a period of 5 years and expired May 7, 2015. This application was made June 15, 2016, after the expiry of the sign by the Subdivision and Development Appeal Board.
>
> The proposed Minor Digital Sign is installed on a Freestanding Sign, contrary to Section 8(e), DC1 Area 2, Bylaw 17595. [typographical errors in from the original decision have been corrected for clarity]

[14] The Appellant noted that had the subject application been filed prior to the permit's expiry in May 2015, the Development Authority would have been prohibited from refusing the application solely on the basis of an amendment to the regulations. However, as the original permit had lapsed, the application that is before this Board was treated as a new application and reviewed against the amended DC1 (17595 – Area 2).

Issue

[15] The subject development is in a direct control district, and the Board's authority to hear appeals related to developments in direct control districts is set out in section 641(4)(b) of the *Municipal Government Act*. Section 641(4)(b) provides that the Board may substitute its own decision for that of the Development Authority's only if it finds that the Development Authority did not follow the directions of City Council.

[16] Accordingly, the issue before this Board is as follows:

1) Did the Development Officer fail to follow the directions of council in his interpretation and application of section 8(e) of DC1 (17595 – Area 2)?

Statutory Interpretation

[17] In *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, [1998] SCJ No 2 [*Rizzo*], at paragraph 21, the Supreme Court of Canada adopted the following approach to statutory interpretation:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

a. Intention of Parliament Regarding Section 8(e)

[18] It is accepted that parties can turn to legislative documents to determine the intention of Parliament – or in this case, the minutes and report to Council when it passed Bylaw 17595. However, the Appellant submitted that there is nothing in these Council documents to indicate Council's intent with respect to section 8(e). There is also nothing in the applicable statutory plan referencing this particular signage regulation. It would

appear that section 8(e) made its way into the Direct Development Control Provision without discussion.

[19] In the absence of any indication as to Council's intent in the relevant Council documents, the meaning of section 8(e) must be gleaned from a plain reading of that provision in its grammatical and ordinary sense, and within the context of the overarching *Edmonton Zoning Bylaw.*

b. Plain Reading of Section 8(e) in its Grammatical and Ordinary Sense

[20] To reiterate, section 8(e) of DC1 (17595 – Area 2) states that "Major or Minor Digital Signs shall not be installed on a Freestanding Sign."

[21] The Development Officer interpreted section 8(e) as meaning that a Major or Minor Digital Sign *shall not be* a Freestanding Sign. Worded another way, the Development Officer's interpretation amounts to saying that Major or Minor Digital Sign in this direct control district shall not take the form of a Freestanding Sign. Such an interpretation erroneously conflates the meaning of "shall not be installed on" with "shall not take the form of".

[22] The Appellant submitted that a plain reading of the phrase "be installed on" requires a pre-existing Freestanding Sign, upon which an applicant intends to install a Major or Minor Digital Sign. In using this particular phrasing, Council ensures that modern digital signage is prevented from being simply "plugged into" existing old static signage. As examples of this hybrid modern digital/old static signage, the Appellant referenced photographs of various versions of signs from other jurisdictions.

[23] In contrast, the subject development proposes the installation of only a Minor Digital Sign without any old and/or static elements, therefore, section 8(e) should not apply.

c. Harmonious Reading of Section 8(e) with the Scheme and Object of the Edmonton Zoning Bylaw

[24] The Appellant submitted that a harmonious reading of section 8(e) as contemplated by the Supreme Court of Canada in *Rizzo* requires that the wording be compared with the wording of general sign regulations in the *Edmonton Zoning Bylaw*. Such an approach is consistent with section 1.2(4) of the *Edmonton Zoning Bylaw*, which states:

> **1.2 Contents of Bylaw**
>
> The contents of this Bylaw shall include:
> …
>
> 4. Part IV, comprising all Direct Control Provisions adopted by City Council pursuant to the provisions of Section 720 of this Bylaw.

[25] Pursuant to section 1.2(4), direct control districts are not isolated from the overall *Edmonton Zoning Bylaw*. The provisions within DC1 (17595 – Area 2) must be interpreted within the context of the *Edmonton Zoning Bylaw*.

[26] Accordingly, the Appellant referenced section 59F.3(6)(d)(ii) of the *Edmonton Zoning Bylaw*, which states:

> **59F.3 Regulations for Discretionary Signs**
>
> 6. Minor Digital On-premises Off-premises Signs and Minor Digital Off-premises Signs shall be subject to the following regulations:
> …
>
> d. the maximum Area shall be:
> …
>
> ii. 65.0 m^2 for proposed Signs that are Freestanding Signs. The maximum combined Area of Digital Sign Copy and any other type of Copy on the same Sign face shall not exceed 65.0 m2;

[27] He noted that section 59F.3(6)(d)(ii) uses the phrasing "proposed Signs *that are Freestanding Signs.*" The Appellant submitted that a Minor Digital Off-premises Sign is a type of Use Class, whereas a Freestanding Sign is one type of "form" that a sign might take. Another "form" that a sign might take is a Fascia Sign. The phraseology of section 59F.3(6)(d)(ii) illustrates that the *Edmonton Zoning Bylaw* does contemplate that digital signs can take different forms.

[28] If Council had intended to prohibit all Minor Digital Signs in the "form" of Freestanding Signs as per the Development Officer's interpretation of section 8(e), then the provision would have used the phraseology identified in section 59F.3(6)(d)(ii). Section 8(e) would then read: "Major or Minor Digital Off-premises Signs *that are Freestanding Signs* shall not be permitted." Alternatively, it might adopt the wording of section 59.2(15), which provides in part that various Sign Use Classes "*shall not be* Roof Signs, Projecting Signs or Temporary Signs." However, section 8(e) does not use such phrasing. Instead, it states: "Major or Minor Digital Signs shall not be *installed on* a Freestanding Sign."

[29] The Board noted that based on the Appellant's interpretation, it would appear that section 8(e) prohibits the conversion of a Freestanding Sign into a Digital Sign, while permitting an installation of a Digital Sign at first instance. Referencing paragraph 27 of *Rizzo*, *t*he Board questioned whether such a reading would produce an absurd consequence not intended by Council.

[30] In reply, the Appellant submitted that section 8(e) operates to prevent a new Digital Sign from being simply plugged into an older Freestanding Sign. In doing so, Council is actually encouraging the removal of these older Signs to be replaced with newer

Freestanding Digital Signs. As such, the Appellant's interpretation of section 8(e) is actually consistent with the *Edmonton Zoning Bylaw*.

[31] Upon questioning by the Board, the Appellant confirmed that the subject Sign is a Freestanding Sign. The Appellant also confirmed that should the Board allow this appeal, the Development Officer's recommended conditions as set out in his Written Submissions are standard requirements of the *Edmonton Zoning Bylaw* and are acceptable.

ii) Position of the Development Authority

[32] The Development Authority was represented by legal counsel, Mr. M. Gunther, who was accompanied by Mr. S. Ahuja, Development Officer.

Statutory Interpretation: Harmonious Reading of Section 8(e) in its Ordinary and Grammatical Sense

[33] The Development Authority recognized that the established principle for statutory interpretation is as set out by the Supreme Court of Canada in *Rizzo*. That being said, the use of the word "install" in its ordinary and grammatical sense is simply one way of phrasing how a sign comes about, and it is clear that a sign comes about by being installed.

[34] Furthermore, a plain reading of section 8(e) cannot presume to read in the word "existing". If Council had intended section 8(e) to mean the prohibition of the installation of Minor Digital Signs on pre-existing Freestanding Signs, as submitted by the Appellant, then section 8(e) should state: "A Major or Minor Digital Sign shall not be added to, or put onto, an existing Freestanding Sign." In the absence of clear verbiage to this effect, the ordinary and plain meaning of section 8(e) is that Freestanding Minor Digital Signs shall not be installed on the subject Site.

[35] With respect to the Appellant's suggestion that each reference to the prohibition of Freestanding Signs should be phrased consistently and identically, the Development Authority noted that the *Edmonton Zoning Bylaw* is essentially an omnibus of a number of bylaws that have been passed over the years. To demand that each reference to each identical situation be phrased in the same fashion is simply not possible.

[36] The Development Authority noted that a review of the Sign Use Classes in the *Edmonton Zoning Bylaw* show that Freestanding Off-premises Signs are a defined Use Class under section 7.9(3).

[37] However, upon questioning by the Board, the Development Authority acknowledged that Minor Digital Off-premises Sign is a Use Class, and that Freestanding Signs or Fascia Signs are built forms. That being said, it was the Development Authority's position that

there are instances in which the Use Class will specifically incorporate the built form, as indicated by section 7.9(3).

[38] In this case, although the term "Freestanding" has not been attached to "Minor Digital Sign" in section 8(e) of DC1(17595 – Area 2), that provision as a whole is a regulation that restricts Minor Digital Signs from being installed on, or constructed in the form of, a Freestanding Sign.

[39] The Board noted that section 8(a) of DC1(17595 – Area 2) states that "Signs shall comply with the General Provisions of Section 59 and the regulations found in Schedule 59F of the Zoning Bylaw". As noted by the Appellant, Schedule 59F contemplates Discretionary Signs such as Minor Digital Off-premises Signs in the form of Freestanding Signs. The Board questioned whether section 8(a) suggests that Minor Digital Signs in the form of Freestanding Signs are at least contemplated within this direct control district by incorporation of section 59 and Schedule 59F of the *Edmonton Zoning Bylaw*.

[40] In response, the Development Authority noted that it is not uncommon in direct control districts to include references to the general regulations of the *Edmonton Zoning Bylaw*, and then stipulate more specific regulations that would supersede the general.

Statutory Interpretation: Purposive Approach and Council's Intent

[41] The Development Authority noted that the Supreme Court of Canada has held that municipal legislation should be given a purposive interpretation – that is, what was the intention of Council in passing the subject bylaw?

[42] The Development Authority submitted that in this case, Council's intent for this direct control district is that Minor or Major Digital Signs shall not go onto a Freestanding Sign. Further, Council is concerned about the effect and impact of Freestanding Minor or Major Digital Signs.

[43] As such, although the Appellant submitted photographs of signs from other jurisdictions as examples of modern digital signs being "installed" onto older, freestanding static signage, the overarching static component of these hybrid signs makes no difference, as Council is ultimately concerned about the impact of the Freestanding Minor or Major Digital Sign.

[44] The Board noted that the application form for sign permits appears to set out four types of signs: Projecting Signs, Fascia Signs, Roof Signs, and Freestanding Signs. However, section 59.2(15) states in part that "Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs *shall not be Roof Signs, Projecting Signs or Temporary Signs*". [emphasis added] In addition to the exclusionary clause under section 8(e) of DC1 (17595 – Area 2) which, according to the Development Authority, prohibits Freestanding Minor Digital Signs, it

would appear that none of the four types of signs contemplated in the application form are permitted.

[45] Given that Minor Digital Off-premises Signs are a Listed Use in this direct control district, the Board questioned whether the operation of section 59.2(15) in combination with the interpretation of section 8(e) as submitted by the Development Authority would lead to an absurd result.

[46] In reply, the Development Authority noted that of the four sign types referenced in the application form, section 59.2(25) is the general regulation that excludes only Roof Signs and Projecting Signs. Section 8(e) further specifies that Freestanding Signs are excluded, which leaves Fascia Signs as the remaining available Sign form. This result is consistent with Council's intent for the development of the downtown core, which has recently seen Minor Digital Off-premises Signs in Fascia form integrated directly into the new Rogers Place arena and Royal Alberta Museum.

[47] Upon questioning by the Board, the Development Authority confirmed that its position is that City Council allows Off-premises Digital Signs in this direct control district only in the context of a Fascia Sign and not as a Freestanding Sign. The Area Redevelopment Plan envisions a vibrant urban community, yet the proposed development is located on what is effectively an empty lot. To encourage development that aligns with Council's vision, Fascia Digital Off-premises Signs are therefore allowed in conjunction with another development.

[48] The Board questioned whether Council's vision would typically be captured in the statutory plan, to which the Development Authority replied that Council achieves its vision in a number of ways. Statutory plans, the *Edmonton Zoning Bylaw*, and direct control bylaws all work together to help realize Council's vision. In this case, section 8(e) is the best method through which Council can direct to the Development Authority that Freestanding Minor Digital Off-premises Signs are not to be permitted in this direct control district.

[49] When the Board questioned whether the prohibition of all Sign forms with the exception of Fascia Signs amounts to a type of sterilization of the Site, the Development Authority noted that this direct control district actually lists a wide variety of Uses.

iii) Rebuttal of the Appellant

[50] The Appellant submitted that an expectation of consistency in the *Edmonton Zoning Bylaw* and the direct control provisions that form a part of that bylaw is not unreasonable.

[51] The Appellant further submitted that it is inconceivable that Council intended to take away his client's ability to generate a profit, short of developing a building in conjunction with a Fascia Sign. In support, the Appellant submitted Exhibit "A", *Love v Flagstaff (County) Subdivision and Development Appeal Board*, 2002 ABCA 292, which held that municipal law that constrains property rights should be construed restrictively.

Decision

[52] 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) The proposed Freestanding Minor Digital Off-premises Sign permit is approved and expires November 18, 2021.
2) The proposed Freestanding Minor Digital Off-premises Sign shall comply in accordance to the approved plans submitted.
3) Minor Digital Off-premises Signs shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution, in accordance with the following:

    a) Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))
    b) Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada (Reference Section 59.2(5)(b))

4) The proposed Freestanding Minor Digital Off-Premises Sign shall comply with the following conditions in consultation with the Transportation Planning, in accordance to Section 59.2(11):

    a) That, should at any time, Transportation Planning and Engineering determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
    b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
    c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

Advisements:

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

Reasons for Decision

[53] The proposed development is for a Minor Digital Off-premises Sign, which is a Listed Use in the DC1 (Bylaw 17595 – Area 2) Direct Development Control Provision.

[54] Because the proposed development is in a direct control district, the authority of the Board is constrained by the provisions of section 641(4)(b) of the *Municipal Government Act*, which reads:

> 641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
>
> …
> (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[55] The Board must first determine if the Development Officer followed the directions of Council when he refused to grant a development permit for the proposed development.

[56] The Development Officer indicated in his reasons for refusing the application that "Major & Minor Digital Signs shall not be installed on a Freestanding Sign (Reference Section 8(e), DC1 Area 2, Bylaw 17595 (April 4, 2016))."

[57] In determining whether the Development Officer followed the directions of Council, the Board makes the following findings of fact:

i) The Development Officer's sole reason for refusing the subject development was based on section 8(e) of DC1 (17595 – Area 2), which states: "Major or Minor Digital Signs shall not be installed on a Freestanding Sign."
ii) The Board was presented with submissions about how that specific provision should be interpreted. Based on those submissions, the Board finds that the proposed development is for a Minor Digital Off-premises Sign Use, with a Freestanding built form. Under section 3(ll) of DC1 (17595 – Area 2), Minor Digital Off-premises Signs are a Listed Use in this direct control district.
iii) Based on submissions of the Development Officer, the Board finds that the proposed development complies with all regulations governing Minor Digital Off-premises Signs as set out in the Sign Regulations under section 59 of the *Edmonton Zoning Bylaw*, and no variances are required.

The Modern Principle of Statutory Interpretation as Applied to Section 8(e)

[58] The determination of whether the Development Officer followed the directions of Council turns on the interpretation and application of section 8(e). Section 8(e) provides that Digital Signs "shall not" be installed on a Freestanding Sign. Ordinarily, the use of the word "shall" indicates that the statutory directive is obligatory, with no discretion for the Development Officer to decide otherwise.

[59] However, the use of "shall" must be considered in its context, both as it is used in section 8(e) itself, and within the broader context of the direct control provision and the *Edmonton Zoning Bylaw*. The Board's interpretation of section 8(e) is further guided by the overarching approach to statutory interpretation as adopted by the Supreme Court of Canada in *Rizzo* at paragraph 21, which provides as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[60] With respect to the determination of "the scheme of the Act, the object of the Act, and the intention of Parliament", the Board has considered the relevant statutory plans, that being the 104 Avenue Corridor Area Redevelopment Plan and the Oliver Area Redevelopment Plan. However, the Board found no indication in these statutory plans regarding the intent of Council with respect to section 8(e). The Board therefore recognizes that although the plans may provide some illumination as to Council's broad vision regarding this Site and the surrounding neighbourhood, they provide little guidance as to the interpretation and application of section 8(e).

[61] The Board notes that there was some inference, as submitted by the Appellant Authority, that Council intends Sign development in this direct control district to reflect the developing urban character of the downtown core, as reflected by the Fascia Digital Signs at the new Rogers Place arena and the Alberta Royal Museum. However, the Rogers Place arena is located within the AED Arena and Entertainment District Zone under section 910.12 of the *Edmonton Zoning Bylaw*. The Alberta Royal Museum is located within the CCA Core Commercial Arts Zone under section 910.5. In both those cases, the Capital City Downtown Plan apply, and in the case of the AED Zone, there is specific regulation governing sign development.

[62] The subject development, however, is located in a direct control district, under the 104 Avenue Corridor Area Redevelopment Plan. As such, while Council may indeed intend to restrict the built forms of Digital Signs in the AED Zone and the CCA Zone – and the Board makes no finding in this regard – there is no such indication with respect to Digital Signs in this direct control district.

[63] The Board therefore turns its mind to the words of section 8(e) "in their entire context and in their grammatical and ordinary sense". In this case, section 8(e) prohibits a Digital Sign from being "installed on" a Freestanding Sign. The Board heard from the Appellant that the use of the word "installed" indicates that section 8(e) governs only those Digital Signs which are to be installed upon a pre-existing Freestanding Sign. The Development Authority, on the other hand, submitted that section 8(e) operates to prohibit the installation of Digital Signs in the form of a Freestanding Sign.

[64] Throughout the course of the hearing, the parties submitted various alternative wording for section 8(e) that would have better clarified Council's intent. Although the submissions were instructive, the Board finds that it need only examine the use of the word "install" in its "grammatical and ordinary sense". The Board therefore takes notice of the use of the preposition "on", which indicates the location that the Digital Sign is to be installed upon.

[65] Should the position of the Development Authority be accepted, then the preposition "on" need only be replaced with the preposition "as". In other words, if Council had intended that Digital Signs be prohibited from being installed as Freestanding Signs, section 8(e) simply needs to read: "Major and Minor Digital Signs shall not be installed **as** a Freestanding Sign."

[66] Instead, Council has chosen to phrase section 8(e) as it currently reads, with the use of the preposition "on". The Board therefore concludes that a "grammatical and ordinary" reading of section 8(e) supports the submissions of the Appellant: that is, section 8(e) prohibits the installation of Digital Signs **on** or **upon** a Freestanding Sign. Section 8(e) does not prevent Digital Signs from being installed **as** a Freestanding Sign, or in the *form* of a Freestanding Sign.

[67] In the absence of clear information regarding Council's intent, the Board relies upon the approach to statutory interpretation as set out by the Supreme Court of Canada in *Rizzo*. Based upon a reading of section 8(e) in its entire context, in its grammatical and ordinary sense, and in relation to the overarching *Edmonton Zoning Bylaw*, the Board finds that the phrase "install on" is sufficiently different from other verbiage that has been adopted in other Sign regulations within the overarching *Edmonton Zoning Bylaw*.

[68] Since section 8(e) does not apply to the subject development, the Board must then turn its mind to the remaining subsections 8(a) through (d). No issues were raised by either party with respect to these subsections, and as noted above, no variances are required to the General Regulations governing Signs under section 59 and Schedule 59F of the *Edmonton Zoning Bylaw*.

[69] For the above reasons, the Board finds that the Development Officer misinterpreted section 8(e) and therefore did not follow the directions of Council. Pursuant to section 641(4) of the *Municipal Government Act*, the Board may substitute its own decision for that of the Development Authority's.

The Board's Discretion Under Section 641(4) of the *Municipal Government Act*

[70] In determining whether to exercise its authority under section 641(4), the Board has considered the following factors:

i) Having found that section 8(e) does not apply to the subject development, and that the proposed Sign complies in all other respects with the General Sign Regulations under section 59, the Board finds that the subject Freestanding Minor Digital Off-Premises Sign shall be considered a Class A Permitted Development pursuant to section 12.3 of the *Edmonton Zoning Bylaw*, and therefore should be issued as of right.
ii) Three emails and one online response were submitted in opposition to the development. The concerns relate largely to the impact of the proposed development upon driver safety, light pollution, and Sign aesthetics.
iii) However, the Board was also in receipt of correspondence from City of Edmonton Urban Transportation, expressing that it had no concerns with the proposed development. The Development Officer has also confirmed that the proposed development requires no variances to the regulations governing Signs under section 59, including those provisions that regulate Sign lighting and brightness levels.
iv) The Board also heard from the Development Authority that Council's vision for the downtown core is to gradually shift Digital Signs to Fascia forms, such as those found at the new Rogers Place arena and the Royal Alberta Museum. However, the Board notes that these developments are located outside the 104 Avenue Corridor (see paragraphs 61 and 63, above).

[71] For the reasons stated, the Board finds no compelling reason as to why it should not exercise its authority under section 641(4). Accordingly, the Board substitutes its decision for that of the Development Authority's. The appeal is allowed and the development is granted.

Vince Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Ms. P. Jones; Mr. R. Hachigian; Mr. R. Handa; Mr. A. Peterson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.

2. Obtaining a Development Permit does not relieve you from complying with:

    a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
    b) the requirements of the *Alberta Safety Codes Act*,
    c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    d) the requirements of any other appropriate federal, provincial or municipal legislation,
    e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, 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 NW, Edmonton.

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

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Subdivision & Development Appeal Board

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Date: November 18, 2016
Project Number: 225899566-001
File Number: SDAB-D-16-276

Notice of Decision

[1] On November 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 6, 2016. The appeal concerned the decision of the Development Authority, issued on September 26, 2016 to refuse the following development:

> Convert the existing Single Detached House to a Child Care Services Use (44 Children) and to construct interior and exterior alterations (develop outdoor play space)

[2] The subject property is on Plan 0125035 Blk 30 Lot 40, located at 2210 - 37A Avenue NW, within the RSL Residential Small Lot Zone. The Meadows Area Structure Plan applies to the subject property.

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

- Copy of the Development Permit application with plans;
- Memorandum from the City of Edmonton Transportation and Planning;
- Memorandum from Fire Rescue Services;
- Copy of the refused permit;
- Canada Post receipt confirming delivery of the refusal decision on September 28, 2016;
- Development Officer's Written Submissions, dated October 27, 2016;
- Revised plans and supporting documentation of the Appellant, received November 3, 2016;
- Sixteen emails and three online responses in opposition to the development.

Preliminary Matters

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

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

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

Summary of Hearing

i) Position of the Appellant, Pro Consulting Design & Build

[7] The Appellant was represented by Mr. N. Singh and Mr. V. Malhotra.

[8] The Appellant submitted revised plans for 30 children instead of the proposed 44 children. The revised proposal would reduce the required number of parking spaces and drop-off spaces.

[9] The Appellant reviewed the reasons for appeal, and drew particular attention to the decision of a previous panel of this Board, SDAB-D-16-100. In that decision, the Board waived or relaxed parking requirements pertaining to staff parking, loading space requirements and bicycle parking spaces.

[10] The Appellant explained that although the City of Edmonton Transportation Planning and Engineering Department objected to the proposed development for 44 children, it expressed that the proposed drop-off stalls on 22 Street were acceptable. Should the Board approve the development, the Appellant will pay a fee to Transportation Planning and Engineering for the installation of a sign, which will restrict pickup/drop-off parking along 22 Street between the hours of 7:00 a.m. to 8:00 a.m., and 5:00 p.m. to 6:00 p.m.

[11] The Appellant acknowledged that Transportation Planning and Engineering does not support the development as a whole. However, the revised proposal will eliminate the drop-off parking deficiency, and will decrease the required number of staff parking.

[12] With respect to the emails that were submitted in opposition to the development, the Appellant stated that they had only been made aware of the opposition just prior to the hearing. The Appellant also noted that three of the submitted emails were from the same individual, while another two were also from one individual.

[13] The Board noted that when the Appellant's door-to-door community consultation results are compared with the emails submitted in opposition, it would appear that approximately 1/3 of those who expressed support are actually in opposition. The Appellant clarified that the emails were submitted after the community consult, so it is possible that some of the initial respondents changed their minds. During the community consultation, the Appellant informed the neighbours of their intention to provide revised plans which will result in a decrease to the parking requirements. However, they did not provide a copy of the plans.

[14] Upon questioning by the Board, the Appellant confirmed that the Development Authority has not had an opportunity to review the revised plans.

[15] Referencing the revised plans, the Board noted that the rendering of the proposed on-street parking shows vehicles that appear to be parked on the opposite side of the street. The Appellant clarified that the images were drawn incorrectly, and that the on-street parking is provided adjacent to the property.

[16] The Appellant submitted that parking requirements could be met by allowing staff to park their two cars in the garage, since they will be the first people to arrive, and the last to leave. Three more cars can be parked on the driveway. Although it appears that one car will have to be parked on the Front Yard, it is actually on the driveway, which is wider than normal and will allow for three cars to be parked across it.

[17] The Appellant acknowledged the proposed development does not have a rear lane, is located at a different address, and generally differs from the previously approved permit granted by a panel of this Board in SDAB-D-16-100.

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

[18] Mrs G. Kaur, representing Ms. M. Hollait who resides outside the 60 metre notification area, explained that Ms. Hollait intends to use the proposed Child Care Services. Ms. Kaur also accompanied the Appellant during the door-to-door community consultation the previous night, and observed that many property owners appeared happy with the proposal, as many had young children.

[19] Mr. G. Dhillon, representing his cousin who resides outside the 60 metre notification area, also appeared in support of the development.

iii) Position of the Development Authority

[20] The Development Authority was represented by Mr. P. Belzile.

[21] Mr. Belzile observed that the driveway does not appear wide enough for three cars. The addition of the third car, which extends the driveway, would not comply with the regulations, as a front Driveway has to lead directly from the street to a garage. The proposed third parking space on the driveway amounts to another parking space on the Front Yard, and parking is not permitted on the Front Yard in residential zones.

[22] He confirmed that he first saw the original plans one week prior to the appeal hearing, when the development application was reassigned to him. His first opportunity to review the revised plans was on the day of this appeal hearing.

[23] Upon questioning by the Board, Mr. Belzile stated that he would prefer that the revised plans be recirculated to Urban Transportation, due to their strong opposition to the original proposed plans.

iv) Position of Affected Property Owners in Opposition to the Development

[24] The following individuals appeared in opposition:

a) Mr. C. Lal;
b) Ms. L. Cherchuk; and
c) Ms. C. Hill.

[25] Mr. Lal explained that he was appearing on behalf of his daughter who resides within the 60 metre notification area. His daughter had also submitted an email with a number of photographs, which form a part of this appeal record.

[26] Mr. Lal explained that his daughter's primary concern with this development is safety. Her garage is located right next to the garage of the proposed development. It was her view that the proposed Child Care Services is more appropriate for a commercial space. While caring for his grandchildren, Mr. Lal has observed that there are existing parking problems in the neighbourhood. The proposed pickup/drop-off solution will exacerbate the problem.

[27] Ms. Cherchuk's echoed Mr. Lal's concerns about parking. She noted that from the subject Site to the end of the block, there are effectively only two on-street parking spaces. In addition, there is a seasonal parking ban during the winter months. Upon questioning by the Board, Ms. Chercuk stated that she had not been contacted during the community consultation, as the Appellant was aware that she opposed the development.

Submissions of Ms. C. Hill

[28] Ms. Hill explained that she is a property owner within the 60 metre notification area. She was one of the individuals who initially expressed support, and then afterward changed her mind.

[29] When the Appellant consulted with her, she was in the middle of other tasks and did not fully understand the scope of the proposal. Furthermore, the tone of the conversation suggested that parking had already been approved by the City, that the development was effectively a done deal, and that the appeal was a formality.

[30] Subsequently, she drove past the proposed development and decided that she could not support the development.

[31] First, parking is a primary concern. The proposed plans do not show that while on-street pickup/drop-off is provided on the west side of 22 Street, the east side is lined with

duplexes. These duplexes have a single garage with a single driveway. Residents of these duplexes make use of the on-street parking along 22 Street, and it is unlikely that they will change their parking habits to accommodate the proposed restricted on-street pickup/drop-off hours.

[32] Second, due to the exacerbated parking stresses, children will end up being forced to cross the street to get to the proposed Child Care Service. This is particularly dangerous as the development is located on the corner of a T-intersection.

[33] Regarding the Appellant's suggestion that the driveway is wide enough to park three cars, Ms. Hill disagreed. She noted that both her house and the subject house were built by the same developer, with the exact same layout. She can barely park two cars on her driveway, and it will be impossible for the Appellant to park three cars.

[34] Upon questioning by the Board, she explained that there are several bus stops in the area, including one directly across the street on 37A Avenue heading eastbound, a second westbound bus stop on 23 Street, and a third northbound bus on that same corner. She confirmed that 37A Avenue is used by school buses as well.

v) Rebuttal of the Appellant

[35] The Appellant submitted that they hoped their revised proposal and parking plan could be recirculated to Urban Transportation, and if required, they could provide a parking justification.

[36] The Appellant stated that they did conduct a form of parking study for 22 Street at different times of day. They noticed that there were no cars parked on the street during the day, mostly two cars parked on the evenings, and one car parked on and off about three days per week.

[37] The Appellant was also prepared to reconsider the number of children and work with Sustainable Development.

[38] Mr. Malhotra also proposed a pickup/drop-off service to eliminate the need provide for on-street pickup/drop-off.

Decision

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

Reasons for Decision

[40] The proposed development is a Child Care Services Use, which is a Discretionary Use in the RSL Residential Small Lot Zone.

[41] The Board was presented with amendments, edits and changes to the original application that contemplated decreasing the number of children served from 44 to 30. The proposed changes may have also required subsequent conversations with Urban Transportation. The Board is of the view that the number of changes require recirculation to the relevant City departments, and a further review against the development regulations by the Development Authority.

[42] The Board therefore did not consider any of these proposed changes, which had not been reviewed by the Development Officer and which all parties were seeing for the first time on the day of the hearing. The Board dealt specifically with the original application as it was refused by the Development Authority.

[43] In denying the appeal, the Board considered many factors, and finds that this specific Site poses traffic, parking and safety concerns. The Board finds that this particular location has significant traffic constraints. Based on the oral and written submissions, the Board accepts that the proposed development is located near a school, in close proximity to several bus routes, faces a duplex style development directly across the street to the east, and is located on a road that is used by both transit and school buses. All of these factors contribute to traffic flow concerns, which will be further exacerbated by the proposed development.

[44] In particular, the Board was presented with several indications provided by the neighbours that parking is already constrained along 22 Street. Should a restricted loading zone be approved, it would take away from the on-street parking capacity, and further constrain the overall parking in the neighbourhood. There are also seasonal parking restrictions along 37A Avenue. For these reasons, the Board finds that the proposed off-street parking solution is not sufficient for a Child Care Service Use of this size.

[45] There was also significant written opposition, in addition to three parties who appeared at the hearing in opposition to the development. Though two individuals appeared in support of the development, the Board notes that they represented individuals who reside outside the 60 metre notification area. Though these individuals expressed their desire to avail themselves of the proposed Child Care Service, the Board notes that these individuals will be the least impacted by the traffic and parking concerns that the development will exacerbate.

[46] Finally, the Board notes that the Appellant referred to a previous decision of a panel of this Board, SDAB-D-16-100, as support for why this subject development should be approved. However, the Board finds that the panel in SDAB-D-16-100 was dealing with

entirely different circumstances: that project proposed a Child Care Service Use for 28 children, was located at a different address with a different zoning, and had rear lane access. Further, since that decision, the development regulations governing Child Care Services have been amended, particularly those relating to parking requirements. The amendment indicates to this Board that Council is concerned about the impacts upon residential parking posed by Child Care Services, and that as a Discretionary Use, parking factors should be considered.

[47] The Board therefore concurs with the Development Officer's opinion that the general purpose of the RSL Residential Small Lot Zone would be impacted by the increased noise and vehicular traffic from the proposed development, which would be in excess of what is typical for a residential zone.

[48] Given that Child Care Services are a Discretionary Use in this zone, the Board must consider its compatibility with the neighbourhood. Given the traffic, parking and safety concerns noted above, the Board finds that this development would unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the Board declines to exercise its authority pursuant to section 687(3)(d) of the *Municipal Government Act.* The appeal is therefore denied and the development is refused.

Vince Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Ms. P. Jones; Mr. R. Hachigian; Mr. R. Handa; Mr. A. Peterson

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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Date: November 18, 2016
Project Number: 181887042-001
File Number: SDAB-D-16-277

Notice of Decision

[1] On November 3, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 6, 2016. The appeal concerned the decision of the Development Authority, issued on September 28, 2016, to refuse the following development:

> Convert an existing Single Detached House to a Child Care Services Use (32 children) and to construct interior and exterior alterations (convert garage into play space, develop parking spaces and create on-site outdoor play space)

[2] The subject property is on Plan RN43 Blk 13 Lot 1, located at 11203 - 97 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Memorandum from the City of Edmonton Transportation and Planning;
- Memorandum from Fire Rescue Services;
- Copy of the refused permit;
- Canada Post receipt confirming delivery of the refusal decision, signed and dated on September 30, 2016;
- Development Officer's Written Submissions, dated October 27, 2016;
- Results of neighbourhood consultation.

Preliminary Matters

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

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

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

Summary of Hearing

i) Position of the Appellant, Ms. H. Nooraldin

[7] Ms. Nooraldin was accompanied by her daughter, Ms. Majeed.

[8] Ms. Majeed explained that they purchased the house one year ago, and wished to convert it into a day-home. Her mother has been working in the childcare serviced industry since she moved to Canada, and would now like to develop her own day-home, based on her own views about how the home should be run. The proposed development presents the first step toward this goal. Should the operation grow and expand, they will move the business to another site.

[9] Ms. Majeed also explained the community consultation process they undertook. They approached property owners both within and slightly outside the 60 metre notification area, as there were some individuals inside the radius who did not answer their doors. Most respondents expressed interest in the development and some provided feedback. They got the sense that the service would be appreciated.

[10] Ms. Majeed clarified that nobody will reside in the home. Services will be provided between the hours of 7:30 a.m. and 5:30 p.m. Most of the children will come from outside the immediate area. As the development is located in a densely clustered area of smaller homes, she expects that most children will be able to walk to the site.

[11] The Board noted that the proposed plans show a ramp and six foot fence to be installed. Mr. Majeed clarified that the ramp was requested by the City, and that it will be accessed via the front yard. The higher fence is also to ensure the safety of the children. The property is located on a corner lot and fronts onto 97 Street, so the fence will run around the entire house, including the side of the house that abuts a residential street and rear lane, as well as the front yard facing onto 97 Street. The Appellant was concerned that a lower, four foot fence would be insufficient in preventing a particularly overactive, taller child from jumping over it.

[12] The Board also sought clarification with respect to the proposed conversion of the garage into a play space. Mr. Majeed explained that the conversion had been discussed at several stages of the development, and they only decided definitively to request the conversion approximately four months ago. The garage play space will result in the replacement of the overhead garage door with panels. The panels will not result in a different building shape or style.

[13] With the removal of the parking spaces in the garage, parking requirements will be met by providing one parking space on the driveway for staff, and five parking spaces to the

rear of the property that abuts the rear lane. Ms. Majeed confirmed that the concrete pad in front of the garage was already existing when they purchased the property. There was never a driveway leading from the garage to the rear lane. Instead, the existing driveway is accessed from 112 Avenue.

[14] Upon questioning by the Board, Mr. Majeed confirmed that the garbage area will be completely screened away from children while remaining accessible to City waste removal trucks. The Appellant expressed no concerns about the recommended conditions of the Development Officer.

ii) Position of the Development Authority

[15] The Development Authority was represented by Mr. P. Belzile.

[16] In his view, there was nothing inherently dangerous about the parking orientation, with the driveway exiting onto 112 Avenue and the parking pad located on the flanking side yard. That parking orientation was likely a community character regulation to maintain the tree-lined pedestrian boulevard.

[17] With respect to the six foot high chain-linked fence, it was his understanding that the response from Transportation and Planning was restricted solely to the parking impacts. It would not appear that they considered the impact of the fence upon driver sightlines. It was his view that although the chain-link fence might have an impact at that particular intersection, it would not be to an extent that would deteriorate the sightlines significantly.

[18] With respect to the driveway exiting onto 112 Avenue, Mr. Belzile noted that as indicated by Transportation and Planning, any future redevelopment of the Site would require new closure of that access point, as it is a non-conforming access. However, the required closure is a regulation that could be varied by the Development Officer, if justified.

[19] From a planning perspective, the driveway has been used for a long time as a parking space, and he does not see any significant impact for it to be continued to be used as such. However, he would prefer that it be used for employee parking rather than for pickup/drop-off.

[20] The Board noted that although three staff parking spaces are proposed, it would appear that there are only two spaces provided in the plans. Mr. Belzile stated that there is likely a mistake on the plan, as the legend indicates that there are four staff parking spaces, yet the crosshatched portion shows five. It was likely that one of those spaces should have been for staff parking. Notwithstanding, the total parking remains accurate.

[21] The Board noted that the original Development Officer who had refused the application determined that the development could generate noise and vehicular traffic in excess of what is typical for a residential dwelling. The Board questioned how she came to that

conclusion. Mr. Belzile was unsure but speculated that she likely looked at the traffic from 97 Street, and foresaw increased traffic congestion as vehicles make their way in and out of 112 Avenue. There was possibly some concern about noise generated by the outdoor play space.

[22] In his view, the projection of the handicapped ramp into the Front Setback was likely not a serious reason for refusal, but was mentioned in her decision as it appears that the ramp was a result of various discussions with the Safety Codes Officer.

iii) Rebuttal of the Appellant

[23] The Appellant clarified that the development proposes four pickup/drop-off parking spaces, and three spaces for staff, as per the legend on the proposed plan. One of the staff parking spaces was mislabeled.

Decision

[24] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED, subject to the following CONDITIONS:

Development Conditions:

1) Any associated signage on the Dwelling must not detract from the residential character of the neighbourhood. (Reference Section 80(3))

2) Where outdoor play space is provided at ground level it shall be allowed in any Yard. It shall be fenced on all sides and all gates shall be self-latching. Fencing shall not be required where outdoor play space is proposed to share existing play equipment on Sites zoned (US) Urban Services Zone or (AP) Public Parks Zone, or if an exemption is permitted by the Government of Alberta. (Reference Section 80(3))

3) A converted Dwelling shall not change the principal character or external appearance of the Dwelling in which it is located. (Reference Section 80(4)(c))

4) All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

5) The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6.

6) The applicant is advised of the approved crime prevention design guidelines contained in the Design Guide for a Safer City, such as the layout and design of

buildings and associated parking and loading areas, yards and landscaped areas, to promote a safe, well-lit physical environment. (Reference Section 58)

7) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)

8) All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1(1)(c))

9) Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference Section 54.1(3))

10) Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

11) Five Passenger pick-up/drop-off spaces shall be designated with signs to reserve the parking spaces for Child Care Service pick-up/drop-off, to the satisfaction of the Development Officer. (Reference Section 33(a)(i))

NOTES:

a. Signs require separate Development Applications.

b. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

c. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).

d. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

e. A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

f. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

Transportation Planning and Engineering Conditions:

1) Access to 112 Avenue for existing access and to the proposed stalls from the adjacent north-south alley is acceptable as shown on the Enclosure. Any modification to the existing accesses requires the review and approval of Transportation Planning and Engineering.

2) The proposed on-street pick-up/drop off stall on 112 Avenue is acceptable to Transportation Planning and Engineering. The owner/applicant must contact Parking Management for the information on installing a 5 minute passenger loading zone, adjacent to the said property with a sign indicating the operational time limits reflecting the hours of operation for a cost of $421.02.

3) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of alt underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

4) Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as shown on Enclosure.

5) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

   - the start/finish date of project;
   - accommodation of pedestrians and vehicles during construction;
   - confirmation of lay down area within legal road right of way if required;
   - and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

   It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: *http://www.edmonton.caltransportation/on your streetsion-street-construction-maintenance-permit.aspx*

6) Any alley or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The alley and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Transportation Planning and Engineering Advisements:

1) With the future redevelopment of the site the existing residential access to 112 Avenue may require removal as shown on the Enclosure.

2) Any expansion of the Child Care Services that would create additional parking or pick-up/drop-off stalls may require a parking justification. Transportation Operations has advised that this site is located within a restricted Residential Parking Program. There is also currently no parking allowed on the south side of 112 Avenue.

   Should you require any additional information please contact Pat Atkinson at 780-944-0256.

Fire Rescue Services Advisements:

1) If the building will be protected by a fire alarm system, ensure that the Fire Alarm Annunciator panel is located in close proximity to the building entrance that faces a street or emergency access route.
   Reference: ABC 3.2.4.9 Annunciator and Zone Indication
   ABC 3.2.4.1. Determination of Requirement for a fire alarm system

4)f) a school,college, or child care facility, including a day care facility, with an occupant load more than 40,

2) Partial Occupancy Conditions as per AFC 5.6.1.12. For additional information please see:
Occupancy of Buildings Under Construction STANDATA –
http://www.municipalaffairs.alberta.ca/documents/ss/STANDATA/building/bcb/06BCB002.pdf

Reference: 5.6.1.12. Fire Separations in Partly Occupied Buildings
1) Where part of a *building* continues to be occupied, the occupied part shall be separated from the part being demolished or constructed by a *fire separation* having a *fire-resistance rating* of not less than 1 h.

For additional information please contact our office.
Tiffany Edgecombe
tiffany.edgecombe@edmonton.ca

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

1) Section 141.4(10) is varied to permit a maximum Site Coverage of 33% (177.0 square metres) for the principal building instead of 28% (150.50 square metres), resulting in a deficiency of 5% (26.5 square metres).
2) Section 814.3(10) is waived to permit access to the public roadway, 112 Avenue, notwithstanding the abutting rear lane.
3) Section 54.2(2)(ii) is varied to permit one parking space to be located on the flanking side yard abutting 112 Avenue.
4) Section 49(4) is varied to permit a six foot high (1.85 metre) fence in the front yard and flanking side yard.
5) Section 54.4(3)(a) and Schedule 3(2) of Section 54.4 is waived such that a loading space will not be required.
6) Section 44(3)(d) is varied to permit a deficiency of 0.5 metres. The handicapped ramp is permitted to project 3.0 metres into the Front Setback, instead of the maximum allowable projection of 2.5 metres.
7) [Section 55.5(6) – Note: no variance granted as Appellant has assured the Board that trash collection area will be completely screened.]

Reasons for Decision

[26] The proposed development is for a Child Care Service, which is a Discretionary Use in the RF3 Small Scale Infill Development Zone. The Board must accordingly be satisfied that this specific Use is reasonably compatible with the neighbourhood.

[27] Section 140.1 states, in part, that the purpose of the RF3 Zone "is to provide for Single Detached Housing… while allowing small-scale conversion… under certain conditions."

Although the Development Officer concluded that the development will generate excess noise and traffic that is atypical of a residential area, the Board does not agree.

[28] As the property abuts a major thoroughfare, 97 Street, which is a truck route, transit route, and a designated highway, the Board finds that any noise created by this development will be mitigated by its proximity to 97 Street.

[29] The development is also located on the outer perimeter of the Norwood residential neighbourhood and the northeast corner of 97 Street. Given the short distance to this major thoroughfare, the Board finds that traffic through the residential neighbourhood will be minimized, as parents will not need to venture too far into the heart of the neighbourhood to pick-up/drop-off their children.

[30] Several variances are required for the proposed development, and the Board elects to exercise its authority under section 687(3)(d) to grant the required variances for the reasons that follow.

[31] First, regarding the required variance to the maximum Site Coverage, the Board finds that the existing physical structure will not be altered. The variance is created when converting the attached garage into a play space, and not due to any exterior changes. The conversion of the garage into a play space will have no external visual impact upon the neighbourhood. Notwithstanding the requirement to maintain a 28% Site Coverage for the Principal Dwelling, the total Site Coverage with the attached garage is 33%, well under the maximum of 40% in the RF3 Zone.

[32] With respect to the prohibition against vehicular access from the flanking public roadway under section 814.3(10), as well as the prohibition against parking on a Side Yard under section 54.2(2)(e)(ii), the Board notes that the community consultation required under the Mature Neighbourhood Overlay was specific to the flanking access. The Board also accepts that the results of the community consultation about the project as a whole was generally positive, and that there was no opposition from any respondents.

[33] Regarding the proposed six foot high chain-link fence, the Board accepts the Appellant's submission that the fence will enhance child safety, given the proximity of the outdoor play space to 97 Street. Transportation and Planning was also aware of this increase in height, as is evident from their memorandum, and expressed no written opposition. The Board is satisfied that the location of the fence, and the required variance to the fence height, will not contribute negatively to traffic safety or driver sightlines.

[34] With respect to the proposed Platform Structure (the handicapped ramp) that projects 0.5 metre more than allowable into the Front Setback, the Board accepts that the addition was made as a result of discussions with the Safety Codes Officer. Although matters pertaining to Safety Codes are generally outside this Board's jurisdiction, the Board acknowledges that this requirement will be needed to obtain the required Building Code permit, and therefore grants this variance.

[35] Finally, the Board is satisfied that the Appellant will ensure that the trash collection area will be completely screened and that it will meet all City regulations. Accordingly, the Board finds that a variance to this requirement under section 55.5(6) is not required.

[36] For the above reasons, the Board finds that it is appropriate to grant the required variances for this development. The variances 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. Accordingly, the appeal is allowed and the development is granted.

Vince Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Ms. P. Jones; Mr. R. Hachigian; Mr. R. Handa; Mr. A. Peterson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

2. Obtaining a Development Permit does not relieve you from complying with:

    a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
    b) the requirements of the *Alberta Safety Codes Act*,
    c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    d) the requirements of any other appropriate federal, provincial or municipal legislation,
    e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, 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.