

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Agrola Inc. v Development Authority of the City of Edmonton, 2019 ABESDAB 10195

Date: November 19, 2019
Project Number: 312964149-001
File Number: SDAB-D-19-195

Between:

Agrola Inc

and

The City of Edmonton, Development Authority

Board Members

Mark Young, Presiding Officer
Shari LaPerle
James Wall
Rick Hachigian
Allan Bolstad

DECISION

[1] On November 7, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 15, 2019 for an application by Agrola Inc. The appeal concerned the decision of the Development Authority, issued on September 27, 2019, to refuse the following development:

To change the Use from Automotive and Minor Recreation Vehicle Sales/Rentals to the Greenhouses, Plant Nurseries and Garden Centres Use (Agrola Inc.)

[2] The subject property is on Plan 8422077 Blk 62 Lot 3, located at 15035 - 127 Street NW and Plan 8422077 Blk 62 Lot 4, located at 15035 - 127 Street NW, within the IB - Industrial Business Zone.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submissions; and
- One online response in support of development.

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

- Exhibit A – Satellite view of subject property

Preliminary Matters

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

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

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

Summary of Hearing

i) Position of the Appellant, Agrola Garden Centre

[8] Mr. J. Mouneimne appeared on behalf of Agrola Garden Centre.

[9] The business was formerly leasing land at 137 Avenue and 118 Street but was forced to re-locate quickly as the owner of that property wanted to re-claim the land. It is difficult to find vacant land on the north side that satisfies the needs of the Appellant's business which sells trees, shrubs, annuals, perennials and some seeds.

[10] There are two small existing portable structures on the property which the business plans to use for tool and equipment storage and to sell seeds. The Appellant plans to erect a greenhouse tent from May to the end of August to protect the plants.

[11] Mr. Mouneimne planned to first apply for a permit without the addition of any structures and apply for the addition of the greenhouse tent later as time is of the essence. He was told by the Development Officer that the City would prefer that everything be applied for at once.

[12] An aerial photo was provided by the Appellant (marked Exhibit A) which shows that the existing fence is inside of the property line by about three metres. The property line, existing fence and location of the required 6-metre setback were identified on this photo. The Appellant would like to move the fence further out as soon as possible to provide a larger lot but this is not currently financially feasible.

- [13] The proposed parking area and the entrance to the proposed development were also identified. The entrance is from 151 Avenue. This Avenue is undriveable past the entrance to the greenhouse.
- [14] The property is in much better condition since the Appellant has been leasing it. The grass has been cut and the weeds are being controlled.
- [15] The Appellant provided the following responses to questions from the Board:
- a. The Appellant confirmed that the distance from the curb to the fence is 28 feet.
 - b. The business typically operates from the middle of April to the end of October.
 - c. The property owner is unwilling to share the expense for the required landscaping. The Appellant feels that this landscaping is unnecessary due to the nature of the business. There will be many trees displayed inside of the fence that runs along 127 Street.
 - d. Nothing is actually grown on the premises and the Appellant does not currently intend to sell landscaping supplies such as dirt, rocks, gravel, sand, etc. His business consists entirely of trees, shrubs, annuals, perennials and some seeds.
 - e. The trees that are sold are all potted and 99 percent of the customers take their purchases home with them. Delivery service is provided very occasionally.
 - f. The Appellant confirmed he would agree to a condition that only plant material can be stored next to the roadway and that any additional structures including tents would require a separate Development Permit.

ii) Position of the Development Officer, C. Kennedy

- [16] The Development Authority did not attend the hearing and the Board relied on Mr. Kennedy's written decision.

Decision

- [17] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:
1. This Development Permit authorizes the development of a Greenhouse, Plant Nursery and/or Garden Centre. The development shall be constructed in accordance with the plans approved by the Subdivision and Development Appeal Board.
 2. The Development Permit shall not be valid unless and until any conditions of approval, except those of a continuing nature, have been fulfilled. (Reference subsection 17.1(1)(a))3.

3. A separate Development Permit will be required for any additional structures to be erected on this site including tents.
4. Only trees, shrubs or other plant material are permitted to be displayed along the property line adjacent to 127 Street.
5. No loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. (Reference subsection 400.4(4)).
6. 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, except for the purpose of Special Events. (Reference subsection 54.1(1)(c))
7. 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. (Reference subsection 54.1(3)(a)(i)).
8. Parking spaces for the disabled shall be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference subsection 54.1(3)(a)(iii))
9. All required parking spaces shall be clear of any access driveways, aisles, ramps, columns, Signs or other similar obstructions. (Reference subsection 54.2(4)(a))
10. Required Bicycle Parking spaces and accesses shall be located on Hardsurfaced areas. (Reference subsection 54.3(2)(d))
11. All Bicycle Parking spaces shall be situated to maximize visibility so as to discourage theft and vandalism, and shall be illuminated. (Reference subsection 54.3(2)(h))
12. Bicycle Parking shall be designed so that the bicycle is supported upright and allows locking of at least one closed section of the bicycle frame and at least one wheel with a U-lock; or designed so that the entire bicycle is contained within an individual bicycle safe. (Reference subsection 54.3(3)(a))
13. Bicycle Parking racks shall provide two points of contact with the frame, at least 0.2 m apart horizontally so that the bicycle cannot fall or be pushed over causing damage to the bicycle. (Reference subsection 54.3(3)(a)(i))
14. The design and installation Bicycle Parking racks and corrals shall accommodate a variety of bicycle types and attachments. (Reference subsection 54.3(3)(a)(ii))

15. Bicycle Parking racks or bicycle safes shall be anchored securely to the ground or to a fixed structure. (Reference subsection 54.3(3)(b))
 16. All required loading spaces shall be clear of any access driveways, aisles, ramps, columns, Signs or other similar obstructions. (Reference subsection 54.4(2)(c))
 17. All required parking and loading facilities shall be clearly demarcated and have adequate storm water drainage. (Reference subsection 54.6(1)(a)(i))
- [18] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The requirement for minimum 6.0 metre Setback where any lot line of a Site abuts a public roadway, other than a Lane, or abuts the property line of a Site zoned residential pursuant to Section 400.4(3) is waived.
 2. The Landscaping requirements of 53 trees and 88 shrubs pursuant to Section 55.3(1)(b)(i) is waived.

Reasons for Decision

- [19] Greenhouses, Plant Nurseries and Garden Centres are a Discretionary Use in the IB Industrial Business Zone.
- [20] The Appellant advised the Board that at this time he just wants a Development Permit for keeping, trees, shrubs, flowers and other similar greenhouse materials on the site.
- [21] He does want to put a tent on the site but he will apply for a separate Development Permit in the future.
- [22] With respect to the 6-metre setback that is required along the property line adjacent to 127 Street, the Board notes that no setback apparently exists at this time for the previous Use which was Automotive and Minor Recreation Vehicle Sales/Rentals. Also, the requirement for landscaping was not fulfilled for the previous Use.
- [23] Because the nature of this business which will consist exclusively of trees, shrubs and other similar products, the need for landscaping is diminished. The condition that the Board has imposed that only trees, shrubs, flowers and such can be stored along the property line adjacent to 127 Street essentially takes the place of the requirement for landscaping.
- [24] The Board also notes that there is an 8.5-metre boulevard between the fence along 127 Street and the curb which further mitigates the need for a 6-metre setback along that street.
- [25] There is also a boulevard on the other side of the street between the street and the residential zone which provides further buffering to the residences to the west of the

proposed development. Also, this will be a seasonal operation which further lessens any potential impact that the development will have on surrounding properties.

- [26] There was support from nine of the neighbours in the residential development to the west of the proposed development and there was no opposition received to the proposed development.
- [27] For all of the above reasons the Board is of the opinion 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.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

cc: City of Edmonton, Development & Zoning Services, Attn: Mr. C. Kennedy / Mr. H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Renu Bhattacharya v Development Authority of the City of Edmonton, 2019
ABESDAB 10196

Date: November 19, 2019
Project Number: 328004462-001
File Number: SDAB-D-19-196

Between:

Renu Bhattacharya

and

The City of Edmonton, Development Authority

Board Members

Mark Young, Presiding Officer
Shari LaPerle
James Wall
Rick Hachigian
Allan Bolstad

DECISION

[1] On November 7, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 7, 2019 for an application by Novesta Homes Ltd. The appeal concerned the decision of the Development Authority, issued on September 30, 2019, to refuse the following development:

To construct an Accessory Building (addition to Existing Accessory Building, 2.28 metres by 6.71 metres).

[2] The subject property is on Plan 1820775 Blk 9 Lot 19B, located at 12A - Valleyview Crescent NW, within the RF1 - Single Detached Residential 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:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions; and
- The Appellant's written submissions.

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 (the "*Municipal Government Act*").

Summary of Hearing

i) Position of the Appellant, R. Bhattacharya

- [7] The Appellant was represented by M. Bhattacharya and R. Gupta. The property owners R. Bhattacharya and A. Bhattacharya were also present.
- [8] The Appellants also own 12B Valleyview Crescent for which a Development Permit was issued last week granting the exact same variances that are being sought today. The deficiency in the required side setback is between the two lots owned by the Appellants and they have no issues with this deficiency.
- [9] A letter provided to the Board from G. Morison of Maxwell Progressive realty identifies 36 homes in the Parkview area that have a triple garage.
- [10] Nine letters of support from surrounding neighbours were provided to the Board. These neighbours fully understood the variances that were being requested.
- [11] While the Development Officer's report stated that a neighbouring property owner objected to an oversize garage as it would interfere with the sightlines from their outdoor amenity space, no official opposition was received from this neighbour despite the fact that separate notices were sent to him for each of the developments at 12A and 12B Valleyview Crescent. The Appellants tried numerous times to contact this neighbour without success.
- [12] The minimum required Setback between the subject property and 10 Valleyview Crescent has been met.

- [13] Their developer approached all of the immediate neighbours and provided his contact information. The Appellants received feedback that the neighbours were happy with how the work was being done with minimal disruption to the neighbours.
- [14] The four percent increase in Site coverage does not negatively impact any neighbours and does not compromise their safety. The garage will not be occupied so there are no privacy issues.
- [15] The triple garage alleviates the requirement for street parking and increases accessibility for the potential buyers, especially in our harsh winters.
- [16] The Appellants provided the following responses to questions from the Board:
- a) The original intent was to build an oversize double garage; however they changed their original plans after their potential buyers indicated the need for a triple garage. They would have made the dwelling smaller had the triple garage been planned for at the start.
 - b) The garage will have a flat roof and will not have eaves encroaching on to the neighbour's property.
 - c) They do not feel the reduced Setback will create any maintenance issues.
 - d) There was originally a large bungalow on the site. The lot was subdivided and the bungalow was demolished.
 - e) The houses are currently at the drywall stage and the garages have not yet been built.

ii) Position of the Development Officer, M. Bernuy

- [17] The Development Authority did not attend the hearing and the Board relied on Ms. Bernuy's written submission.

Decision

- [18] 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 development shall be constructed in accordance with the stamped and approved drawings.
 2. An accessory building or structure shall not exceed 4.3 metres in Height. (Reference Section 6.1 and 50.3(3).)
 3. An Accessory building or structure shall not be used as a Dwelling. (Reference Section 50.3(1))

4. Eave projections shall not exceed 0.46 metres into required yards or Separations spaces less than 1.2 metres. (Reference Section 44.1(b))
 5. Every Driveway, off-street parking or loading space, and access provided shall be Hardsurfaced. The area required to be Hardsurfaced may be constructed on the basis of separated tire tracks, with natural soil, grass, or gravel between the tracks, but shall be constructed so that the tires of a parked or oncoming vehicle will normally remain upon the Hardsurfaced area (Reference Section 54.6(2)).
- [19] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Site Coverage for an Accessory Building of 46.8 square metres as per section 110.4.6(a) is varied to allow an excess of 14.3 square metres, thereby increasing the maximum allowed to 61.1 square metres.
 2. The maximum allowable Total Site Coverage of 156.2 square metres as per section 110.4.6(a) is varied to allow an excess of 14.1 square metres, thereby increasing the maximum allowed to 170.3 square metres.
 3. The minimum required distance of 0.9 metres that an Accessory building shall not be located from the interior Side Lot Line as per Section 50.3(5)(b) is varied to allow a deficiency of 0.3 metres, thereby decreasing the minimum allowed to 0.6 metres.

Reasons for Decision

- [20] Single Detached housing is a Permitted Use in the RF1 Single Detached Residential Zone. A detached garage is Accessory to a Permitted Use.
- [21] The Appellant owns two lots on Valleyview Crescent – 12 A and 12B. The Board heard that the property on 12B was recently approved for development by the Development Authority with essentially identical variances to those required for the property at 12A, which is the subject of this appeal.
- [22] The necessary variances relate to the oversized Accessory Building. The garage is limited to 12 percent Site coverage according to Section 50.3(4) of the *Edmonton Zoning Bylaw* but the proposed garage is 16 percent. The total Site coverage is limited to 40 percent according to 110.4(6) of the *Edmonton Zoning Bylaw* but the proposed total Site Coverage is 44 percent. The Side Setback distance for the Accessory Building is required to be a minimum of 0.9 metres according to 50.3(5)(b) but on the west side of the proposed garage this Setback is 0.6 metres from the side lot line.
- [23] Development on the property immediately to the west has been approved with essentially identical variances to those required in the instant appeal.
- [24] It appears that the Development Permit that is before the Board was refused by the Development Officer because the property owner immediately to the east of the proposed

development objected to the development because the accessory building would interfere with the sightlines from their outdoor amenity space. With respect to that objection, the Board notes that the house on that property to the east is located well towards the front of the lot and that there is a six-foot fence running between the properties. The Board also notes that the proposed garage would be located at the required 0.9-metre Setback from the lot line shared with the property to the east. The Board is of the opinion that even if the proposed garage were not 4 percent over the allowed Site Coverage, the neighbour's sightlines would remain the same. The Board concludes that the required variances will have little impact on this neighbour's use and enjoyment of his property.

- [25] The oversized garage will be at the back of the lot and will have minimal impact on the amenities of the neighbourhood.
- [26] The Board also notes that the Appellant received support from six neighbours within the 60-metre notification zone.
- [27] For all of the above reasons the Board finds 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.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

cc: City of Edmonton, Development & Zoning Services, Attn: Ms. M. Bernuy / Mr. A. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Date: December 5, 2019
Project Number: 328004462-001
File No. SDAB-D-19-196

Between:

Renu Bhattacharya
and
The City of Edmonton Development Authority

Board Members
Mark Young, Presiding Officer
Shari LaPerle
James Wall
Allan Bolstad

ADDENDUM

- [1] This is a reconsideration of the decision reached by this Board on November 19, 2019 cited as 2019 ABESDAB 10196.
- [2] That decision concerned a Development Permit application for an addition to an Accessory Building (detached garage). After the Board released its decision, it came to the attention of Board administrative staff that an email dated November 5, 2019, from an adjacent property owner had not been brought to the attention of the Board at the hearing. Upon learning of this, Board administrative staff informed the Appellant and the adjacent property owner of the error and gave them the opportunity to provide their views on how the situation should be addressed by the Board.
- [3] In response to that request, the Board received submissions from the Appellant and from the adjacent property owner. This hearing was reconvened so the Board could review those submissions.
- [4] The Board has concluded that it is *functus officio* in this matter. As is noted in the Supreme Court of Canada decision *Chandler et al v. Alberta Association of Architects*, [1989] 2 S.C.R. 848, decision makers are considered to be *functus officio* after a formal judgment has been drawn up, issued and entered.
- [5] There are two exceptions to this:
1. Where there has been a slip in drawing up the judgment, and
 2. When there was an error in expressing the manifest intention of the court.


Neither of those exceptions applies in the instance. However, the Supreme Court of Canada went on to say that the application of the doctrine must be more flexible in respect to decisions of administrative tribunals which are subject to appeal only on a point of law and where there are indications in the enabling statute that a decision can be re-opened. (Paragraph 78)

- [6] The right of appeal with respect to decisions of this Board are limited to questions of law and jurisdiction. Accordingly, the determination of whether the Board has the authority re-open its decisions hinges on whether the Board's enabling legislation, the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA") gives any indication that was the Legislature's intent.
- [7] After reviewing the MGA, the Board has concluded that there are no indications that a decision of this Board can be re-opened. In the absence of such indications, the Board does not have the authority to re-open this decision and it is *functus officio*.
- [8] In the alternative, if the Board is wrong about how the doctrine of *functus officio* applies to this decision, the Board is of the view that the appropriate way to remedy the administrative error that occurred in this case is for the Board to consider the November 5, 2019 e-mail from the adjacent property owner that it did not have access to at the time of the original hearing. This is the only new evidence that the Board has used in its reconsideration.
- [9] On reviewing that e-mail, the Board notes that the adjacent property owner is largely concerned about the newly constructed house on the lot next door, including its height, the fact that it has nearly maximized the Side Setback along his property line and the fact that there are numerous windows on the side of the house facing his property. None of these issues were the subject of the appeal in the instant case.
- [10] As for the garage itself, the adjacent property owner is concerned that it would be 2 feet 11 inches from his property line. This issue was dealt with by the Board in its original decision. The Board previously noted that there is no variance to the Side Setback required on that side of the garage.
- [11] The adjacent property owner also states in his email that there are few triple garages in the neighbourhood. At the hearing on November 7, 2019, the Board heard evidence that there were other triple garages in the neighbourhood. In any event, the Board concludes that the variances required to the garage will not result in a structure that is so large that it will impact the amenities of the neighbourhood or neighbouring parcels of land in any significant way.
- [12] The Appellant provided photos with his e-mail showing the view out his back door, front door, driveway and windows. Those photos primarily show the impact that the newly constructed house has had on his property. After reviewing the photos, the Board finds no reason to change its opinion on the impact that this garage will have on the adjacent property owner.

[13] At para 24 of the Board's decision, it said this:

It appears that the Development Permit that is before the Board was refused by the Development Officer because the property owner immediately to the east of the proposed development objected to the development because the accessory building would interfere with the sightlines from their outdoor amenity space. With respect to that objection, the Board notes that the house on that property to the east is located well towards the front of the lot and that there is a six-foot fence running between the properties. The Board also notes that the proposed garage would be located at the required 0.9-metre Setback from the lot line shared with the property to the east. The Board is of the opinion that even if the proposed garage were not 4 percent over the allowed Site Coverage, the neighbour's sightlines would remain the same. The Board concludes that the required variances will have little impact on this neighbour's use and enjoyment of his property.

[14] Having reviewed the adjacent property owner's November 5, 2019 e-mail, the Board finds no reason to change the decision that it issued previously.



Mark Young
Presiding Officer
Subdivision and Development Appeal Board.

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Signpatico Outdoor v Development Authority of the City of Edmonton, 2019
ABESDAB 10172

Date: November 19, 2019
Project Number: 328004462-001
File Number: SDAB-D-19-172

Between:

Signpatico Outdoor

and

The City of Edmonton, Development Authority

Board Members

Mark Young, Presiding Officer
Shari LaPerle
Allan Bolstad
Rick Hachigian
James Wall

DECISION

[1] On October 9, 2019, the Board made and passed the following motion:

“That the appeal hearing be postponed to November 7, 2019 at the written request of the Appellant.

[2] On November 7, 2019, the Board made and passed the following motion:

“That SDAB-D-19-172 be raised from the table”.

[3] On November 7, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 14, 2019 for an application by Signpatico Outdoor. The appeal concerned the decision of the Development Authority, issued on August 26, 2019, to refuse the following development:

Install (1) Minor Digital On-premises Off-premises Freestanding Sign (SIGNPATICO OUTDOOR | TIM HORTONS), and to remove an existing Freestanding On-premises Sign (246871770-001).

- [4] The subject property is on Plan 0728378 Blk 7 Lot 31, located at 11913 - Wayne Gretzky Drive NW, within the (CO) Commercial Office Zone. The Main Streets Overlay and Montrose / Santa Rosa Area Redevelopment Plan apply to the subject property.
- [5] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submissions;
 - The Appellant's written submissions; and
 - One online response from an affected property in opposition to the proposed development.
- [6] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Written Submission
 - Exhibit B – Proposed Sign
 - Exhibit C – Google Street Views
 - Exhibit D – Google Aerial Views
 - Exhibit E – Site Plans
 - Exhibit F – Transportation Association of Canada (TAC) Report
 - Exhibit G – 119 Avenue Intersection

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 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, C. Roubekas

- [10] Mr. Roubekas appeared on behalf of Sympatico Signs and Task Investments, the owner of the property for over 30 years. This parcel of land has been vacant for the majority of this time.

- [11] For a number of years the owner had an off-premise double-sided sign on the subject site with the same dimensions as the proposed sign. The former sign was permitted in the Commercial Office Zone and was regulated under Schedule 59F of the *Edmonton Zoning Bylaw* (the “*Bylaw*”). There has been no change in zoning and it is still a Commercial Office Zone.
- [12] In 2017, the sign was removed when the owner developed the property and leased it to Tim Hortons and 7-Eleven. The location of the proposed sign was identified on *Exhibit B*. The owner’s intention was always to erect another sign once the development was completed. Unlike the previous sign, the current application is for a single-sided sign.
- [13] A series of photos were used to provide context to the location of the proposed sign and the nature of the surrounding area. The sign is set back 10 metres from Wayne Gretzky Drive and 60 metres back from the nearest intersection.
- [14] The Transportation Department was concerned that the size and proximity of the sign may draw drivers’ attention away from the major intersection. The Appellant addressed these concerns as follows:
- a. Mr. Roubekas quoted the following passage from a 2015 Transportation Association of Canada report: “Despite years of research there have been no definitive conclusions about the presence or strength of adverse safety impacts of DPADs measured by increased collision frequency”.
 - b. The proposed display is located approximately 60 metres from the nearest intersection, which is a substantial distance. Most regulations request a minimum of 30 metres.
 - c. The maximum speed on Wayne Gretzky Drive adjacent to the subject site is 60 kilometres an hour, which is not a high speed roadway.
 - d. There is a traffic control signal directly over the middle of the traffic lanes which is in the direct vision of oncoming drivers. The sign is not in the direct view of southbound drivers.
 - e. The proposed display is significantly set back at a distance of 9.86 metres from the roadway.
- [15] A Commercial Office Zone is regulated under Sign Schedule 59F of the *Bylaw* and the dimensions of the proposed sign would be allowed. However, since the Main Streets Overlay applies to this area, Schedule 59E applies and is more restrictive. The Board should apply Schedule 59F to the proposed development because it is more appropriate. The Main Streets Overlay is not appropriate in this area for the following reasons:
- a. The Main Streets Overlay refers to a “pedestrian-oriented character” which does not describe this property. Photos were used to show the site is sandwiched between two major roadways with little pedestrian traffic and no sidewalks along the west

- perimeter of the subject site. The Coliseum, including its expansive parking lot, and railway tracks are to the west.
- b. The Main Streets Overlay refers to “proximity to residential”. There are no residential areas to the north, south or west. The nearest residential area is 1 ½ blocks to the east and is separated from the proposed development by a commercial area. The proposed development would have no impact on any residential properties.
 - c. The Main Streets Overlay refers to “proximity to residential and transit-oriented areas”. The nearest transit station is more than 350 metres to the southwest. While there might be residential development on the site of the Coliseum in the future, an approved sign permit would be in effect for a maximum of five years and would have to be re-assessed after it expires.
 - d. The Main Streets Overlay refers to “...by providing visual interest, transparent storefront displays, and amenities for pedestrians”. Unlike Whyte Avenue, where the Main Streets Overlay also applies, this area does not provide an attractive, vibrant and walkable commercial street with numerous store fronts and neighbourhood amenities for pedestrians.
 - e. There is a parcel of vacant City-owned land immediately to the north of the subject site with no foreseeable plans for development. There are industrial warehouses further to the north and the Coliseum Inn is to the south, a destination that requires vehicular access.
- [16] A deficiency in separation distances from two existing signs was identified by the Development Officer as follows:
- a. An Axe Music sign is located to the east and is only visible to northbound traffic on Wayne Gretzky Drive. This sign is not visible to the southbound traffic targeted by the proposed sign.
 - b. A Pattison sign is located 296 metres to the southwest and is only visible to east and west bound traffic on 118 Avenue. This sign is not visible to the southbound traffic targeted by the proposed sign.
- [17] Mr. Roubekas is aware of the letter of opposition submitted by Sport Central, which is located directly next to Axe Music. The proposed sign does not prevent Sport Central from making their own sign application and their opposition should have no bearing on today’s decision. Even if today’s appeal is denied there is no guarantee that an application from Sport Central would be approved since the existing Axe Music sign is located 30 metres to the north of Sport Central’s existing identification sign. The Appellant is not aware of any other opposition to the proposed development.
- [18] For the reasons above it is Mr. Roubekas’ opinion that the proposed sign will not have any negative impacts on oncoming traffic, the surrounding area and neighbouring businesses.

[19] Mr. Roubekas provided the following responses to questions from the Board:

- a. The Coliseum has a sign at the corner of 118 Avenue and Wayne Gretzky Drive southbound but this was not identified by the Development Authority as triggering a separation distance issue.
- b. Mr. Roubekas does not know when the Main Streets Overlay was applied to this area.
- c. The proposed sign is the exact same size as what was there before. The whole basis of his argument is that if the Main Streets Overlay did not apply to this area the proposed sign would have possibly been approved by the Development Authority.
- d. The previous sign was not digital.
- e. The sign will not interfere with traffic as it is out of the direct field of view of drivers and is far enough away from the intersection to allow drivers to react. The only difference between the proposed sign and a backlit sign on Tim Hortons or 7-Eleven is that the display will change every six seconds.
- f. There will be no impact to pedestrians walking to the Tim Hortons or 7-Eleven due to the direction the proposed display is facing. Pedestrians would be approaching from the back of the sign.
- g. A Google Aerial view of the 119 Avenue and Wayne Gretzky Drive intersection confirmed that there are traffic lights located there. A 60-metre separation distance from the nearest intersection is ample whether it has lights or not.
- h. He disagrees with the concerns of the Transportation Department. There are many large digital displays in Edmonton and smaller versions are located directly at intersections. In cities like Toronto and Las Vegas there are larger signs adjacent to high speed roadways.
- i. Mr. Roubekas has been in the sign business for a number of years and has never seen a headline stating that an accident occurred due to a visual display. Countless studies have been done on the size of signs and speeds and they have all been inconclusive. This is not a permanent development and if concerns arise the sign can be removed.
- j. He has no concerns with the recommended conditions of the Development Officer or the comments of the Transportation Department should this development be approved.

ii) Position of the Development Officer, K. Mercier

[20] The Development Authority did not attend the hearing and the Board relied on Ms. Mercier's written decision.

Decision

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

Reasons for Decision

[22] This is an application to install a Minor Digital On-premises Off-premises Freestanding Sign and to remove an existing Freestanding On-premises Sign. A Minor Digital On-premises Off-premises Sign is a Discretionary Use in the (CO) Commercial Office Zone. The proposed sign would require six variances.

[23] The first variance relates to section 59.2(2) of the *Edmonton Zoning Bylaw* that states:

Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be located such that the Sign does not obscure a driver decision point. The Development Officer and Transportation Services shall be satisfied that each Copy Area:

- a. does not physically obstruct the sightlines or view of a traffic control device or traffic control signal for oncoming vehicle traffic;
- b. is not located in the field of view near or past the traffic control device or traffic control signal in the sightlines of oncoming vehicle traffic;
- c. is not located in the field of view near or past other traffic conflict points such as intersections, merge points, exit ramps, or curved roadways; and
- d. illumination does not compete with or dull the contrast of the traffic control device or traffic control signal for oncoming vehicle traffic.

The Development Officer advised that there were concerns from the Transportation Department about the proposed Sign. They indicated that “although the Sign is located outside the Transportation Association of Canada’s cone of vision for the rightmost southbound lane on Wayne Gretzky Drive, the oversized sign would still be in the direct driver’s field of view on a downhill view and upstream of a major signalized intersection and the size and proximity of the sign may draw drivers’ attention away from a major intersection.”


The major intersection referred to is at Wayne Gretzky Drive and 118 Avenue. The Board notes there is also a traffic control device at the Wayne Gretzky Drive and 119 Avenue intersection, which is even closer to the location of the proposed Sign.

[24] The Appellant argued that the Sign is located a sufficient distance from both of these intersections and should not pose a problem in terms of distracting drivers before they reach either of the intersections. The Appellant also indicated that a City traffic control

sign directly over the lanes of traffic to the north of those intersections would warn drivers of the approaching intersections and the proposed Sign would be located 10 metres away from the roadway. The Appellant also pointed out that a 2015 Transportation Association of Canada report stated that: “Despite years of research there have been no definitive conclusions about the presence or strength of adverse safety impacts of DPADs [digital signs] measured by increased collision frequency”.

- [25] Notwithstanding these submissions, the Board is loath to over-ride the concerns of the Transportation Department about the impact the proposed Sign could have on traffic safety. This would be a large Sign. The Board has come to the conclusion that a Digital Sign of this size has the potential to cause problems in terms of distracting drivers as they approach these intersections.
- [26] There are three required variances that relate to the size of the proposed Sign. Because the Main Streets Overlay applies to this Site, Sign Schedule 59E of the *Edmonton Zoning Bylaw* governs. If the Main Streets Overlay did not apply, Sign Schedule 59F would regulate Signs on this Site and would allow a considerably larger Sign. With the restrictions imposed by Sign Schedule 59E, the proposed sign would be two metres higher than the allowable six-metre Height, it would be 14.4 metres in width as opposed to the maximum allowed eight metres and it would have an area of 59 square metres as opposed to the 20 square metres allowed.
- [27] The Appellant made some compelling arguments that the Main Streets Overlay was not appropriate for this Site and that the provisions of Sign Schedule 59F would be more suitable. However, all of the proposed dimension overages would contribute to the Sign being of such a size and height that it would pose potential distraction problems for drivers travelling southbound on Wayne Gretzky Drive.
- [28] The two remaining required variances are with respect to separation distances from two existing Digital Signs. A Sign of this size is required to be separated from other Digital Signs by 300 metres.
- a. An existing Pattison Sign at 7300 - 116 Avenue NW is located 296 metres away. The Board is not concerned with this separation distance given that the variance is only four metres and that Sign is oriented to face east and west on 118 Avenue and so would not compete for the view of drivers for the proposed Sign.
 - b. The other Sign is an Axe Music Sign located at 11919 – Wayne Gretzky Drive. The proposed separation distance is 77.3 metres, thereby requiring a 223-metre variance. That Sign is visible only to northbound traffic and would not be visible to southbound traffic. For this reason, the Board would have allowed this variance.

[29] For all of the above reasons, the Board is of the opinion that the proposed development would unduly interfere with the amenities of the neighbourhood and the appeal should be denied.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Development & Zoning Services, Attn: K. Mercier / A. Wen

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.
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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.