



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 9, 2017
Project Number: 239130502-001
File Number: SDAB-D-17-193

Notice of Decision

- [1] On October 25, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 28, 2017**. The appeal concerned the decision of the Development Authority, issued on September 14, 2017, to refuse the following development:

To install (1) Fascia Minor Digital On-premises Off-premises Sign.

- [2] The subject property is on Plan 4980MC Blk 79, located at 6024 - Gateway Boulevard NW, within the (IH) Heavy Industrial Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission including a response from Transportation Services; and
 - The Appellant’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A photograph submitted by the Appellant;
 - Exhibit B – A photograph submitted by the Appellant; and
 - Exhibit C – A photograph submitted by the Development Officer.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

i) *Position of the Appellant, Mr. D. Mitchell and Mr. S. Perez, representing Lumican Corp. ("Lumican") and Mr. R. Nissen, Legal Counsel:*

[8] Lumican is a lighting servicing company that is manufacturing the most advanced LED lighting and providing services to some of the most prominent businesses in Edmonton.

[9] The proposed sign will be located on the south side of the Lumican building. A computer graphic was referenced to illustrate that the proposed sign is unique and much more interesting than a billboard sign. This is an On-premises Off-premises Sign that will include advertising for Lumican and will add character to this industrial zone.

[10] There is one existing sign to the north and one to the south. Mr. Mitchell owns the land to the south. A month to month lease agreement for the sign to the south has been entered into with the sign company. Therefore, the lease agreement can be cancelled within a month and the sign removed from the site. Arrangements have also been made to have the sign removed immediately if a development permit for the proposed sign is granted. The Applicant is willing to have the Board impose a condition that the existing sign to the south be removed if the appeal is allowed.

[11] The proposed sign will add value to the business because it identifies the businesses in this building in a way that cannot be achieved by using a freestanding sign.

[12] The fascia sign was installed inadvertently prior to receiving development approval but it has not been energized. The sign can be removed at a substantial cost to the Applicant.

[13] In their opinion the second reason for refusal is not valid because the proposed sign does not violate the policies of the Calgary Trail Land Use Study and the Study is not a statutory plan.

[14] The subject site does not abut any residential zones. All of the surrounding businesses support the proposed sign and there are numerous digital signs in this area. Due to the angle of the sign and the roadway, drivers will only be able to see the sign while idling in traffic.

[15] Mr. Nissen and Mr. Mitchell provided the following information in response to questions from the Board:

- a) In most instances white light will not be used on the proposed sign. The background and graphics will be pleasing to the eye. Development permits are conditional on meeting the lighting requirements, including automatic dimming at times of low energy levels. The proposed sign will automatically dim and comply with all of the other standard conditions.
- b) The location of the proposed sign is not as distracting as other signs on Gateway Boulevard that are in the direct line of sight of drivers.
- c) In their opinion a variance should be granted for the minimum required separation distance because the existing sign to the south will be removed which will address the proliferation of signs and mitigate the required variance.
- d) The proposed fascia sign cannot be moved, the only option is to remove it.
- e) Drivers will see the proposed sign and the existing freestanding sign located northeast of the subject site but this situation is typical along Gateway Boulevard and drivers have become accustomed to it.
- f) Mr. Mitchell referenced a photograph marked *Exhibit A* to illustrate the location, shape and size of the proposed sign. A Google street view image, marked *Exhibit B* was referenced to illustrate the location and size of the existing Pattison sign to the south.
- g) Mr. Perez, a Lumican employee referenced the map contained in the Development Officer's report to clarify the location of a Pattison Off-premises Sign and a sign for LED Pros. Lumican is a small company and most of the advertising on the proposed sign will be for businesses operating from this building. Most of the off-premises advertising will promote city events.
- h) They are prepared to comply with a condition that would require the removal of the existing sign to the south if the appeal is allowed and the development granted.

ii) *Position of the Development Officer, Ms. B. Noorman:*

- [16] A photograph illustrating the proposed sign on the building, the freestanding billboard sign to the south and two other existing signs on the east side of Gateway Boulevard was submitted as *Exhibit C*.
- [17] She questioned how the sign was installed without a valid development permit by a lighting company that conducts business in signage. The sign was installed without a development permit and now the Appellant is claiming that it will be a hardship to remove the sign if the appeal is denied.

- [18] The main concern is the proliferation of signs in this area, especially the close proximity to two existing signs that are located approximately 65 metres east of the subject site.
- [19] A map was referenced to illustrate signs that were refused along Gateway Boulevard because they added to the proliferation of signs in this area. The City is working to make Gateway Boulevard more aesthetically pleasing by following the guidelines of the Calgary Trail Land Use Study which discourages signage along this main entrance corridor into the City.
- [20] The argument of the Appellant to use the existence of other signs as rationale to approve the proposed sign is counterintuitive. The only existing sign that was issued a development permit because it complied with the separation distance requirements is the sign that the Appellant will have removed.
- [21] In her opinion there is no unnecessary hardship for the Appellant who plans to remove the only permitted sign and install a digital sign that is approximately 1 square metre larger in than the sign that will be removed.
- [22] Ms. Noorman questioned the unique sign design, which is basically a rectangle with a staggered edge. There are other existing signs in the City where civic events can be advertised and approving a sign specifically for that purpose is not necessary.
- [23] The existing freestanding sign to the south must be removed as a condition of approval.
- [24] Ms. Noorman provided the following information in response to questions from the Board:
- a) White backgrounds are typically brighter and if it is determined that the sign is too bright, the sign owner is directed to lower the brightness level.
 - b) The proposed sign as well as the other existing signs in this area will be visible to drivers and have the potential to create a distraction.
 - c) The two signs located north of the subject site were refused by the Development Authority but approved upon appeal to the Board.
 - d) An application for a Digital Fascia On-premises Sign at this location would have also been refused.

iii) Rebuttal of the Appellant

- [25] Mr. Mitchell reiterated that his company is not in the sign business. He was advised by a tenant who owned a sign company that the sign could be erected but takes full responsibility for erecting the sign without a development permit.

- [26] Lumican manufactures street lighting and indoor lighting.
- [27] The proposed sign will contain advertising to promote the City which is very different from Pattison or any of the other large sign companies who sell advertising to generate revenue. The proposed sign will advertise the products and services available from his company as well as approximately 50 percent of the other building tenants who pay for the cost through a bartering process.
- [28] It was Mr. Nissen's opinion that the proposed sign is in keeping with Section 3.4(b)(ii) of the Calgary Trail Land Use Study because it will replace an old billboard sign with a new fascia sign that will improve the location, siting, signage comprehend-ability and design of signage in the corridor by discouraging the use of portable signs and freestanding billboards.
- [29] An application could be made to install a digital sign at the site of the existing Pattison freestanding sign but the cost would be prohibitive. A new pole and support structure would have to be installed, a new development permit application would have to be made and the existing fascia sign would have to be removed and the building repaired.
- [30] The recommended conditions provided by the Development Officer have been reviewed and they are prepared to comply with all of the conditions.

Decision

- [31] 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 Fascia Minor Digital On-premises Off-premises Sign shall comply with the approved plans submitted.
 2. The Sign shall only display one static image at each message interval.
 3. The Sign is approved for five (5) years from the date of approval. The permit expires on November 9, 2022.
 4. Prior to review and issuance of the Building Permit, the applicant shall demonstrate to the satisfaction of the Development Officer that the existing Freestanding off-premises sign located as shown on the plans submitted in the south corner of the site, be removed from the site and cleared of all debris.

5. 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))
6. 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))
7. Minor Digital On-premises Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(8))
8. The following conditions, in consultation with the Transportation department (City Operations), shall apply to the proposed Minor Digital On-premises Off-premises Sign, in accordance to Section 59.2.11:
 - a) That, should at any time, Transportation Planning and Engineering (City Operations) determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, deenergizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering (City Operations).
 - b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering (City Operations) within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or deenergize the sign.
 - c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

1. Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a Major Digital Sign will be required. At that time, City Operations will require a safety review of the sign prior to responding to the application.

- [32] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required separation distance of 100 metres as per schedule 59G.3(6)(e) is varied to allow a deficiency of 35 metres, thereby allowing a separation distance of 65 metres from the proposed Sign to the existing Minor Digital Off-premises Sign located northeast of the proposed location.

Reasons for Decision

- [33] A Fascia Minor Digital On-premises Off-premises Sign is a Discretionary Use in the (IH) Heavy Industrial Zone.
- [34] The Board imposed a condition requiring the removal of an existing Freestanding Off-premises Sign located south of the proposed Sign which will mitigate the variance granted in the minimum required separation distance from an existing Minor Digital Off-premises Sign located northeast of the proposed location.
- [35] The proposed Sign is located within the Calgary Trail Land Use Study. Section 3.4(b)(ii) states that:

greater attention shall be given to improving the location, siting, signage, comprehend-ability [sic] and design of signage in the corridor by discouraging the use of portable signs and freestanding billboards (billboards are considered Off-premises Signs).

The Board acknowledges that the Development Authority had to consider the Calgary Trail Land Use Study when reviewing this application. However, the Calgary Trail Land Use Study is not a Statutory Plan that limits the discretionary powers of the Board pursuant to section 687(3)(a.1) of the *Municipal Government Act* which states that:

in determining an appeal, the Subdivision and Development Appeal Board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

- [36] Transportation Planning and Engineering had no objection to the proposed Fascia Minor Digital On-premises Off-premises Sign at this location subject to several conditions that have been imposed by the Board.
- [37] The Board notes that support for the proposed Sign was provided by several of the adjacent business owners. The Board further notes that there were no letters of objection received and no one appeared in opposition to the proposed development.

[38] The Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and is of the opinion that granting the required 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.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Mr. A. Bolstad, Mr. J. Kindrake, Ms. K. Thind

Important Information for the Applicant/Appellant

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

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



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Date: November 9, 2017
Project Number: 255312636-001
File Number: SDAB-D-17-194

Notice of Decision

- [1] On October 25, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 5, 2017**. The appeal concerned the decision of the Development Authority, issued on August 25, 2017, to refuse the following development:

To construct exterior alterations to a Single Detached House (construct new Parking Area in Side Yard and Driveway access to 102 Street).

- [2] The subject property is on Plan 4022MC Blk 8 Lot 1, located at 12904 - 102 Street NW, within the (RF4) Semi-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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions, including a response from Transportation Services; 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.

Summary of Hearing

i) *Position of the Appellant, Mr. D. Dorosh and Ms. D. Ryan. Mr. Dorosh referenced his written submission and provided the following information:*

- [7] An application was made to construct a curb crossing and driveway to provide off street parking for a wheelchair van and allow wheelchair access to the front entrance of the house.
- [8] In his opinion, there was confusion regarding the proposed width of the access. The access will not be less than 12 feet wide as determined by the Development Officer.
- [9] A diagram was referenced to illustrate the proposed 12 foot curb crossing on the west side of 102 Street that will narrow to 10 feet at the edge of the City sidewalk.
- [10] The mature tree on the boulevard is located 6 feet, 3 inches from the edge of the proposed curb crossing. There are trees in the neighbourhood that are located much closer to existing curb crossings.
- [11] Photographs taken during the recent community revitalization and curb renewal program were referenced to illustrate that sod and soil were removed on the north side of the tree at 6 feet, 3 inches, precisely where the proposed vehicle ramp would begin. It was noted that no tree roots were encountered.
- [12] Photographs were referenced to illustrate that wheelchair access to the rear door is not possible because of the location of interior stairs. Therefore the only possible wheelchair access is through the front door from a wheelchair ramp.
- [13] Mr. Dorosh and Ms. Ryan provided the following information in response to questions from the Board:
- a) 129 Avenue ends west of his house at the location of an old railway line that has been removed and replaced by a City walkway.
 - b) The detached garage fronts onto 129 Avenue.
 - c) The suggestion by Transportation Services to develop a parking space on the south side of the house is not feasible because the parking space would not allow convenient wheelchair access to the front door. A wheelchair would have to be moved a significant distance down the sidewalk to the front door.
 - d) If the walkway and ramp were constructed from the Avenue to the south side of the house, the ramp would be built on City property.

- e) Access from 102 Street would allow parking on the driveway. The driveway has to be long enough so that a vehicle is not parked beyond the front face of the house.
- f) Mr. Dorosh acknowledged that if the development permit is approved it will stay with the property. However, the house has been in his family for many years and it is his intention to pass the property on to younger members of the family.
- g) Community consultation was undertaken at the request of the Development Officer. The proposed plans were reviewed with his neighbours. Residents were supportive of the proposed development. However, he could not contact the owners of the duplexes in the neighbourhood that are used as rental properties. The tenants indicated that they would pass the information onto the owners. Twenty-two neighbours provided written support and no one that he contacted was opposed to the development. The President of the Community League did not object.
- h) No alterations have been undertaken to allow wheelchair access to the front door.
- i) Photographs of existing curb crossings and driveways along 102 and 103 Street were referenced to illustrate numerous existing driveways that are 12 feet wide. The decision was made to develop a 12 foot access to be consistent with other driveways in the neighbourhood. The proposed 12 foot access would avoid removal of the existing tree.
- j) The proposed driveway will be located three feet from the property line to the north and that property owner has provided verbal support for the proposed development.
- k) Mr. Dorosh acknowledged that a ramp to the sidewalk on the south side of the house would alleviate some of the problems but it would result in the ramp being located on city property. Utility lines are located on this side of the property that often require servicing. The only service located in the area of the proposed ramp is an EPCOR line that services the street lights. The proposed ramp will not interfere with water or sewer lines.

ii) *Position of Urban Forestry, City of Edmonton, represented by Ms. E. Belva and Ms. C. Teliske:*

- [14] The proposed 2.44 metre wide access to 102 Street will result in the removal of a large boulevard tree.

- [15] Urban Forestry does not support the removal of viable trees. However, if written support is provided by the Community League and land owners on the west side of 102 Street between 129 Avenue to 130 Avenue and the Applicant agrees to compensate Urban Forestry for the asset value, costs to remove the tree and any associated administrative costs, removal of this tree would be permitted. The total asset value for the tree is \$7,000.00 and the cost to remove the tree is estimated to be \$2,400.00.
- [16] The tree would have to be removed because the proposed development will compromise the structural integrity of the tree.
- [17] Foresters worked with construction crews during the recent sidewalk renewal program to ensure that the boulevard trees were not compromised.

iii) Position of the Development Authority, Ms. F. Hetherington:

- [18] Ms. Hetherington provided a written submission and did not attend the hearing.

iv) Rebuttal of the Appellant:

- [19] They did not observe the exposure of any tree roots during the recent sidewalk replacement. When the sod was removed at the 6 foot, 3 inch mark, no tree roots were exposed. He disagreed with the findings of Urban Forestry that the tree would have to be removed as a result of the proposed development.
- [20] The width of the proposed driveway and access is 12 feet, not 8 feet as determined by the Development Officer.
- [21] There are numerous trees in the neighbourhood that have survived excavation and construction. Many of them are located much closer to accesses and driveways than this tree.
- [22] Mr. Dorosh provided the following information in response to questions from the Board:
- a) There are three existing curb cuts located on 102 Street, south of the subject site, between 127 and 129 Avenue and three located to the north between 129 and 130 Avenue.
 - b) There are approximately nine duplexes located between 129 Avenue and 130 Avenue and there are three existing curb cuts.
 - c) The results of the community consultation were submitted to the Development Officer.

- d) He acknowledged the costs associated with the required tree removal if the appeal is allowed and the development granted.
- e) It would be difficult to determine if the death of the tree was the result of the proposed driveway construction or the recent sidewalk replacement program.

Decision

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

Reasons for Decision

- [24] The proposed development is Accessory to a Single Detached House which is a Permitted Use in the (RF4) Semi-detached Residential Zone.
- [25] Based on the evidence provided by the Development Officer, the Board finds that Community Consultation was undertaken and complies with the requirements of the Mature Neighbourhood Overlay.
- [26] The Board agrees with the decision of the Development Officer to refuse this development permit for the following reasons:
- a) There is an existing rear detached Garage with flanking access off of 129 Avenue that accommodates three parking spaces as well as three additional parking spaces on the Driveway.
 - b) The proposed development does not comply with section 54.1(4) of the *Edmonton Zoning Bylaw* which permits only one driveway on the subject property.
 - c) Subdivision Planning, in consultation with Parks and Road Services, objects to the proposed development. It was recommended that the Applicant apply to develop a designated handicapped Parking Area on 129 Avenue adjacent to the property. This would be a more desirable option that would have a minimal impact on neighbouring property owners.
 - d) The proposed development does not comply with section 814.3(17) of the *Edmonton Zoning Bylaw* which states that regardless of whether a Site has existing vehicular access from a public roadway, other than a Lane, no such access shall be permitted to continue where an abutting Lane exists.

- [27] The Board acknowledges the concerns of the Appellant but finds that the other recommended development options will be more compatible with the development requirements of the *Edmonton Zoning Bylaw*.
- [28] Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Mr. A. Bolstad, Mr. J. Kindrake, Ms. K. Thind

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



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Date: November 9, 2017
Project Number: 256829518-001
File Number: SDAB-D-17-195

Notice of Decision

- [1] On October 25, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 27, 2017**. The appeal concerned the decision of the Development Authority, issued on September 7, 2017, to approve the following development:

To change the Use of a portion of an existing building from General Industrial to a Specialty Foods Service Use (9 square metres of Public Space - Boss Pizza and Roti on Wheel).

- [2] The subject property is on Plan 3553P Blk 33 Lot 8, located at 10404 - 64 Avenue NW, within the DC1 Direct Development Control Provision (Bylaw 16136). The Strathcona Junction Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions including a Parking Justification submitted by the Respondent;
 - The Appellant’s written submission; and
 - On-line responses and e-mails in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A copy of the Appellant’s presentation notes; and
 - Exhibit B – An e-mail in opposition from an adjacent property owner.

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*”).
- [8] The Presiding Officer referenced section 641(4)(b) of the *Municipal Government Act*, which states:
- if a decision with respect to a development permit application in respect of a direct control district 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.
- [9] Ms. Therrien was asked to explain how the Development Officer failed to follow the directions of Council in approving this development permit.

Summary of Hearing*i) Position of the Appellant, Ms. J. Therrien:*

- [10] Ms. Therrien resides on 64 Avenue in close proximity to subject site.
- [11] Allendale’s Neighbourhood Renewal is scheduled to begin in Spring 2018. Under its scope, a sidewalk will be added on the south side of the subject site.
- [12] Currently when cars are parked on either side of 64 Avenue, there is a 4.0 metre roadway width for vehicles to drive between. Section 54.2 of the *Edmonton Zoning Bylaw* (the “*Bylaw*”) states that “all required parking aisles shall be a minimum of 3.6 metres wide for parallel parking”. In this case, the road (64 Avenue) is the “aisle”. Assuming the width of the future sidewalk is going to be 1.5 metres, the future width of the roadway will not comply with this requirement. This will force employees to park in front of the residences on 64 Avenue.

- [13] It was the Development Officer's opinion that the proposed development will not unduly interfere with the Use or enjoyment of neighbouring properties. However, having employees parking in front of residences during the peak hours when most residents are home, would undoubtedly interfere with the use and enjoyment of neighbouring properties.
- [14] The proposed fast food delivery business is adjacent to a residential street and could affect property values because it would be impossible to describe this as a quiet neighbourhood with a food delivery business on the block with peak hours of operation between 8:00 p.m. and 10:00 p.m. and no spaces for employee parking, except in front of the adjacent houses.
- [15] If monetary incentives are going to be offered for fast delivery it could create a safety concern. Ms. Therrien referenced *Aviva Insurance Company of Canada Limited v. Pizza Pizza Limited*. In this case the plaintiff's lawyer pleaded that the policy was "a material contribution to the driver's negligence because it rewarded speed and penalized tardiness by requiring the driver to pay for the pizza if he didn't meet the deadline". The judge's ruling supported this argument.
- [16] She referenced section 7.F.d of Bylaw 16136 which states:

At the discretion of the Development Officer in consultation with the Transportation Services Department, a Traffic and/or Parking Impact Assessment prepared by a registered Professional Engineer shall be required as part of the application for a development permit. Issuance of the development permit shall be subject to there being sufficient capacity on the adjacent roadway network, adequate access to and from the Site and where warranted a Development Agreement to construct or pay for the construction of any offsite improvements needed to accommodate the additional pedestrian and/or vehicular traffic associated with the development.

In this case, the Applicant provided justification for the required parking but a Traffic and/or Parking Impact Assessment was not provided.

- [17] Two potential options were suggested. The first one being a full road closure between the business and the residential side of 64 Avenue, or the issuance of Residential Parking Permits for the residential side of 64 Avenue. In this case, a full road closure would make more sense because the area requirement for Residential Parking Programs cannot be less than ten square blocks. The City is reluctant to relax the area requirement because it would result in numerous requests for residential parking programs which if implemented are difficult to administer and enforce.
- [18] Ms. Therrien provided the following information in response to questions from the Board:

- a) It was acknowledged that the requirement to provide a Traffic and/or Parking Impact Assessment is at the discretion of the Development Officer.
- b) In her opinion, the Development Officer should have been aware of the Allendale Revitalization Program and erred by not considering it during the review of this development permit application. She could not confirm whether or not this program has been adopted by Council.
- c) She agreed that any business operating from this location will not be able to provide enough parking.
- d) The proposed evening hours of operation for the food delivery service will have a direct impact on the residents because they will be at home during the evening hours.

ii) Position of the Development Authority, Ms. S. Buccino:

[19] Ms. Buccino provided written submissions and did not attend the hearing.

iii) Position of the Respondent, Mr. V. Kumar, representing Boss Pizza & Roti on Wheel and his Agent, Mr. S. Gupta:

[20] Mr. Kumar is the owner/operator of the proposed business.

[21] The proposed food delivery business will cause the least amount of disruption for residents in this area because only 30 percent of the building will be used for the business, the remainder will be used for personal storage by the building's owner.

[22] The business is family owned and operated and only requires one parking space. Customers will not be able to eat in at this location.

[23] Mr. Kumar and Mr. Gupta provided the following information in response to questions from the Board:

- a) On street parking is available adjacent to the building. Parking is not allowed on Calgary Trail. There is no parking available at the rear of the building.
- b) They have not spoken with any of the neighbours regarding the proposed business but in their opinion the business will enhance the neighbourhood.
- c) Mr. Kumar is the only driver for the proposed food delivery business. His wife and his mother will work in the kitchen.
- d) Customers will be able to order a pizza for pick up.

- e) During the weekends and evening hours there is always street parking available.
- f) They estimate that the business has approximately 50 regular customers for roti delivery and 30 or 40 for pizza delivery. Mr. Kumar estimated that approximately 10 customers will pick up their orders.
- g) Deliveries are made at designated times on designated routes.
- h) Some roti deliveries are done in the morning and some in the evening.
- i) The business model has been developed around Indian style packaged food that caters to single individuals. Pizza delivery was added later when it was requested by some of his customers.
- j) He and his wife, father, and mother will arrive and leave the subject site in one vehicle. They all work from 11:00 a.m. to 10:00 p.m.
- k) The food service will be open for walk-in customers as well. There is a waiting area where a customer can wait for their food order.

iv) Rebuttal of the Appellant:

[24] Ms. Therrien expressed concern that in order for the business to remain viable in the future, it is not out of the realm of possibility that the business will expand and require more delivery drivers who will require additional parking which will only exacerbate the problem.

Decision

[25] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:

1. 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 of the *Bylaw*);
2. Any increase in Public Space will require a separate Development Permit application;
3. Bicycle parking shall be provided in accordance to section 54.3 of the *Bylaw* and to the satisfaction of the Development Officer.

NOTES:

- 1) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 2) Signs require separate Development Applications.
- 3) 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.

[26] In granting the development the following variances to the *Bylaw* are allowed:

1. The minimum required number of parking spaces of one (1) as per section 54.2, Schedule 1(A)(24) is varied to allow a deficiency of one (1) parking space for the Specialty Food Service, thereby decreasing the minimum required number of parking spaces to zero.

The minimum required number of total parking spaces for the subject Site of four (4) as per section 54.1(2)(h) is varied to allow a deficiency of four (4) parking spaces, thereby decreasing the minimum required number of total parking spaces to zero.

Reasons for Decision

[27] Section 641(4)(b) of the *Municipal Government Act* states:

if a decision with respect to a development permit application in respect of a direct control district 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.

[28] The relevant DC1 Direct Development Control Provision (Bylaw 16136) in sections 7d and section 7o(i) clearly grants the Development Officer, in consultation with Transportation Services, discretion in matters related to parking.

The application was circulated to Subdivision Planning (Transportation) and there were no concerns expressed regarding the required parking variance. Accordingly, the Board finds that the Development Officer, in granting the parking variance, did exercise his discretion in accordance with the directions of Council.

- [29] However, if it is determined that the Board has interpreted the requirements of the DC1 Bylaw incorrectly, the Board would deny the appeal and approve the development for the following reasons:
- a) The proposed business is a food delivery service.
 - b) There are no dine-in customers and limited if any walk-in/pick-up customers.
 - c) The business will be family operated and would only require one parking space.
 - d) Peak business hours are during the evening.
 - e) The parking requirements at the time of the decision were calculated on the basis of one parking space per 3.6 square metres of Public Space. However, on September 11, 2017, Council approved a parking reduction for Eating and Drinking Establishments. Based on the new regulations, one parking space is required per 9.6 square metres of Public Space. Therefore the proposed business only requires one parking space.
- [30] The Board acknowledges the long standing parking problems in this neighbourhood and is sympathetic to the concerns expressed by property owners who reside west of the subject Site. However, the Board does not find that granting a variance of one parking space for the proposed development will exacerbate the situation.
- [31] Based on the evidence provided, the Board is satisfied that the Development Authority did follow the directions of Council in approving the proposed development and therefore the appeal is denied.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Mr. A. Bolstad, Mr. J. Kindrake, Ms. K. Thind

Important Information for the Applicant/Appellant

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

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