



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

*10019 – 103 Avenue NW  
Edmonton, AB T5J 0G9  
P: 780-496-6079 F: 780-577-  
3537  
[sdab@edmonton.ca](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)*

Date: October 5, 2018  
Project Number: 284514040-001  
File Number: SDAB-D-18-144

**Notice of Decision**

- [1] On September 20, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 17, 2018**. The appeal concerned the decision of the Development Authority, issued on July 31, 2018, to refuse the following development:

**Construct exterior alterations, existing without permits (a second Driveway and connection to an existing Driveway).**

- [2] The subject property is on Plan 935KS Blk 1 Lots 21,22U, located at 7833 - Saskatchewan Drive NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply 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; and
  - The Development Officer’s written submissions; and
  - The Appellant’s written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Aerial photograph of the subject Site;
  - Exhibit B – Photograph of an adjacent 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.

### **Summary of Hearing**

*i) Position of the Appellant, Mr. A. Nystad, representing Tri-Stad Designs*

- [8] His company built the subject house several years ago and he was not part of the driveway extension.
- [9] The curbs were being done in the area and the property owner wanted to extend the sidewalk when this was being done.
- [10] He is representing the owners who have elderly parents who live with them and the extension will allow them easy access to the house.
- [11] Ten feet was added to the existing sidewalk to allow for a car to allow for easy access in and out of a vehicle.
- [12] The driveway extension has existed for over eight years.
- [13] He approached the Development Officer to apply for a Leave As Built application but was told that the application would not be reviewed that way.
- [14] The property owner does not want to remove the concrete.
- [15] There is more than one house on Saskatchewan Drive that has driveway extensions. He has seen vehicles parked on these extensions.
- [16] The property owner purchased an easement from the City for an additional 10 feet of property to make their property wider.
- [17] Vehicles cannot park on the street in front of the easement area as there is a fire hydrant in this location.
- [18] He spoke to neighbouring property owners and received verbal support except for one neighbour who is not within the 60-metre radius.
- [19] The subject site is larger than most lots on the block.
- [20] In his opinion, the extension is considered a wide sidewalk and not a driveway.

- [21] They were willing to add planters on a portion of the driveway to eliminate parking but the Development Officer did not support that suggestion.
- [22] The City has completed the curb repairs and to remove the concrete will be an issue.
- [23] The property owner also owns the adjacent property.
- [24] In the middle of the extended area, there is a large landscaped area that is aesthetically pleasing.
- [25] Making the sidewalk narrow will not be aesthetically pleasing for the size of the subject house.
- [26] Mr. Nystad provided the following information in response to questions by the Board:
- a. The house is approximately 12 years old.
  - b. Years before the subject house was built, there was access off of Saskatchewan Drive to a front garage.
  - c. The subject house was originally situated differently on the lot. The adjacent neighbour was concerned with the orientation of the house so they revised the plans to address those concerns.
  - d. In the original development permit application, an appeal was made to the Board for a front drive garage, which was approved. The property owners had support from adjacent property owners with the exception of one lady who was concerned with the trees.
  - e. A few years after the driveway and sidewalk were complete, the property owner extended the sidewalk and driveway without applying for a permit.
  - f. The issue came about when the new curbs were being done in the neighbourhood.
  - g. There is no amenity space that is taken away from the neighbours with the extension.
  - h. Currently there is no curb cut and the original curb was only one and a half inches.
  - i. The rear lane is in bad shape and the City rarely removes the snow in the rear lane.
  - j. A house being built south of the subject site has a sidewalk similar to the proposed development. However, it does not have a front drive garage. Several houses in the area have front double garages.
  - k. The property owner intends to use the extended portion as a sidewalk. In the future, the property owner will need to apply for a curb cut.

1. A portion of the extension cannot be seen from Saskatchewan Drive due to the landscaped area and the hedge.
- m. Mr. Nystad confirmed that the portion of the easement along Saskatchewan Drive was purchased from the City.
- n. He is agreeable to the conditions suggested by the Development Officer.
- o. He confirmed that the June 2013 approved site plan was not part of the original application.

ii) Position of the Development Officer, Mr. J. Xie

[27] The Development Authority did not appear at the hearing and the Board relied on Mr. Xie's written submission.

### **Decision**

[28] 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 in accordance with the stamped and approved drawings.
2. The area hard surfaced for a Driveway shall comply with Section 54.6 of the Zoning Bylaw 12800.
3. Except for the hard surfacing of Driveways and/or Parking Areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.

#### Transportation Conditions:

1. The proposed approximate 5.6 m residential access to Saskatchewan Drive located approximately 6.3 m from the north property line must be constructed as a residential crossing, as shown on the Enclosure to the City of Edmonton Design and Construction Standards.
2. There is an existing boulevard tree adjacent to the existing access that must be protected during construction, as shown on the Enclosure. Prior to construction, the owner/applicant must contact Bonnie Fermanuik of City Operations, Parks and Roads Services (780-496-4960) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.

3. Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. All expenses incurred for repair are to be borne by the owner.
4. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; [www.digshaw.ca](http://www.digshaw.ca)) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
5. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
  - the start/finish date of project;
  - accommodation of pedestrian connectivity during all phases of construction for access to the adjacent roadways and intersections
  - accommodation of pedestrians and vehicles during construction;
  - confirmation of lay down area within legal road right of way if required; and
  - confirmation if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

[https://www.edmonton.ca/business\\_economy/licences\\_permits/oscam-permit-reauestaspx](https://www.edmonton.ca/business_economy/licences_permits/oscam-permit-reauestaspx)  
and <https://www.edmonton.ca/documents/ConstructionSafetv.pdf>

Advisements:

1. Lot grades must match the Edmonton Drainage Bylaw 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
2. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

- [29] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. Section 814.3(17) is waived to allow access off of Saskatchewan Drive NW.
  2. Section 54.1(4) is waived to allow a second driveway.

### **Reasons for Decision**

- [30] The proposed development, a Driveway extension, is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [31] The Board heard evidence as well as documentation that showed the original Driveway, Walkway, and curb connection as part of an original application when the new House permit was applied for and the House was built.
- [32] The Board considered the two grey sections on the site plan as the part of the application that this appeal is dealing with.
- [33] When analyzing the curb connection point, the Board supports it being maintained as a Driveway component as the current landscaping and berms in place makes the Driveway unseen from Saskatchewan Drive.
- [34] The section combined with the front sidewalk to make it a Driveway, provides circular access to minimize or eliminate the need to back onto Saskatchewan Drive from the subject Site.
- [35] The curved Driveway will mitigate pedestrian safety concerns. The Board notes that there are no sidewalks on this side of Saskatchewan Drive.
- [36] The Board accepts the consultation process done by the Development Officer as required in the *Edmonton Zoning Bylaw*.
- [37] The sidewalk extension has been in place for approximately 8 to 10 years with no known complaints.
- [38] One of the reasons the Development Officer refused the development permit application was regarding landscaping. The Board accepts the photographic evidence, that landscaping is complete as required with the original development permit.

- [39] The Board accepts the evidence submitted that the oversize “estate” lot and circular driveway enhances the front appeal. The Board agrees with this conclusion that the existing extension does not create a visual impact.
- [40] The Board accepts the evidence submitted that there are similar properties in the neighbourhood that has similar access to a circular extension.
- [41] Access to Saskatchewan Drive is characteristic of the neighbourhood.
- [42] The Board accepts the memorandum from Transportation Services that they were not in opposition to access from Saskatchewan Drive and that the property owner has the ability to apply for a curb cut onto Saskatchewan Drive.
- [43] As part of the conditions, a curb cut permit is required and the Board’s decision in this regard contemplates the issuance of this curb cut permit.
- [44] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [45] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members in Attendance:

Mr. W. Tuttle; Mr. A. Peterson; Ms. K. Think; Mr. R. Hachigian

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. J. Xie / 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.*





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P: 780-496-6079 F: 780-577-  
3537  
[sdab@edmonton.ca](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)*

Date: October 5, 2018  
Project Numbers: 287388966-001  
287389521-001  
File Number: SDAB-D-18-150  
SDAB-D-18-151

**Notice of Decision**

- [1] On September 20, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 28, 2018**. The appeal concerned the decision of the Development Authority, issued on August 14, 2018 to refuse the following development:

**SDAB-D-18-150:**

Place a Temporary Sign for 90 days ending 12-NOV-2018 for THE SIGN GURU INC. (Christy's Corner (Sign #5))

**SDAB-D-18-151:**

Place a Temporary Sign for 90 days ending 12-NOV-2018 for THE SIGN GURU INC. (Christy's Corner (Sign #6))

- [2] The subject property is on Plan 9926834 Blk 13A Lot 14, located at 13635 – St. Albert Trail NW; Plan 9926834 Blk 13A Lot 15, located at 13503 – St. Albert Trail NW; Plan 9926834 Blk 13A Lot 17, located at 13603 – St. Albert Trail NW; and Plan 9926834 Blk 13A Lot 16, located at 14231 - 137 Avenue NW, within the DC2.508 Site Specific Development Control Provision.
- [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 and the refused Development Permit;
  - The Development Officer’s written submission; 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. The Presiding Office advised that evidence for SDAB-D-18-150 and SDAB-D-18-151 will be heard together but will be considered as two separate appeals.
- [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 Ms. J. Agrios, Legal Counsel for the Appellant, who was accompanied by Mr. G. Pawlechko, representing The Sign Guru Inc.*

- [7] The site is a large industrial area that is made up of commercial uses.
- [8] The subject site was previously zoned DC5 under the old Land Use Bylaw 5996.
- [9] She referred to the photographs in her submission showing the site characteristics, an aerial map of the area and photographs of the site from different directions.
- [10] She referred to TAB 7 of her submission, an overview of the property and photographs showing that businesses face the interior of the site. A site plan indicated where the signs will be located on the property.
- [11] The businesses on the subject site do not face the street; therefore the exposure is limited even with the five pylon signs on the subject site. There are temporary signs on the south portion of the site along St. Albert Trail.
- [12] The subject site is well landscaped with mature vegetation which makes it difficult to see the subject signs.
- [13] St. Albert Trail is a high traffic roadway and it is difficult to see tenant names on a pylon sign. Tenants rely on portable signs because not all tenants can find advertising space on the pylon signs.
- [14] There have been six temporary signs on the site since 2013. Her client has applied for a permit for the signs for several years and all of the six signs have been approved until now.
- [15] The site is large and is 23 acres in size.
- [16] Five of the temporary signs are along St. Albert Trail and one is around the corner on 137 Avenue.

- [17] She referred to TAB 2 of her submission, previous approved permits for the temporary signs. She referred to the variances that were granted on the approved permits.
- [18] She referred to TAB 8 of her submission showing where the approved and refused signs are located on the subject site.
- [19] Prior to the hearing starting, Ms. Agrios provided the Board with a copy of section 750 (DC5) Site Specific Development Control Provision (“DC5”) for the Land Use Bylaw; Schedule 59E of the *Edmonton Zoning Bylaw* and section 11 outlining the variance powers of the Development Officer.
- [20] She referred to section 750.4 of the DC5. Section 750.4(d) includes the Special Land Use Provisions, where the applicable Use Class is listed in the DC5 Bylaw.
- [21] Under section 11.4(4) of the Land Use Bylaw, the power of the Development Officer may relax a regulation in a Land Use District or other section of this Bylaw in accordance with the regulations contained in that District or Section, or may relax regulations in accordance with Sections 11.5 and 11.6, and in such case, the use applied for shall be deemed a Discretionary Use.
- [22] Under Section 11.5, the Development Officer may approve, with or without conditions, an application for development that does not comply with this Bylaw.
- [23] In this case, a DC zone incorporates the General Sign Regulations in Schedule 79 of the Land Use Bylaw and a variance power of the Development Officer.
- [24] In this case, the Development Officer referenced a policy established in December 2013 with the Alberta Portable Sign Association (APSA). The policy was established to allow a variance on older DC districts from temporary signage and a variance up to four signs. Rather than look at the site as a whole, the Development Officer applied the 2013 policy.
- [25] The policy is not a direction of Council. The direction of Council is that the Development Officer has the power to grant a variance under section 11.4 of the Land Use Bylaw.
- [26] In her opinion, applying a policy and not exercising their discretion, the Development Officer did not follow the direction of Council.
- [27] Ms. Agrios referred to the aerial map in the Development Officer’s written submission showing the scale and size of the subject site.
- [28] If the site was subdivided there would be more signs located on the site.

- [29] In section 79 of the Land Use Bylaw, there could be one sign for 30 metres of store frontage. There is approximately 650 to 700 metres of frontage, which would allow for more signs on the property.
- [30] There could be ten signs on St. Albert Trail and still comply with the regulations in section 79.
- [31] In her opinion, the location and size of the site is similar to a CSC Shopping Centre Zone Site.
- [32] Under section 59 of the *Edmonton Zoning Bylaw*, a minimum of five signs would be allowed with 30 metres of frontage. There is over 300 metres of frontage; therefore, the Development Officer has the discretion to approve the signs. This is why a variance should be granted.
- [33] She referred to TAB 14 of her submission, the letter from the APSA that the Development Officer referred to in his written submission. Page 2 of the letter refers to the relaxation to allow temporary signs to a maximum of 4 based on the frontage.
- [34] Although the Manager of the Current Planning Branch does not say there is a policy to allow 4 signs, they will accept applications that seek variances of these clauses and consider them on a case-by-case basis.
- [35] The authority to grant a variance should be looked at as a need-by-need basis.
- [36] Under this policy, if it was not for the common entrance, there would be 4 separate lots. The common entrances are treated as one site. If this was the case, there could be 16 signs on the site. The number of entrances and configuration of the site would determine the number of signs on the site.
- [37] In her opinion, the Development Officer did not follow the direction of Council as this is a large 23-acre site with 650 to 700 metres of frontage of commercial buildings.
- [38] The signs have existed with permits in this location for five years with no known complaints.
- [39] Given the size of the site and location, the Development Officer should exercise their discretion to allow a variance for the six signs on the subject Site.
- [40] In her opinion, the suggested conditions in the Development Officer's written submission are not actual conditions as they are regulations in the *Edmonton Zoning Bylaw*.
- [41] Ms. Agrios provided the following information in response to questions by the Board:
- a. The test of the Board is whether or not the Development Officer followed the directions of Council.

- b. If the Board chooses to exercise their discretion differently, they are still following the direction of Council.
- c. She interprets the Development Officer's reason for refusal differently. The development permit was refused because the development does not comply with section 79. That is not discretion to grant a variance.
- d. The test is in section 11.5 and 11.6 of the Land Use Bylaw.
- e. There was no discussion where the Development Officer took consideration for the test.
- f. The Board would have to consider hardship as it is appropriate to look at the test in section 11.5 and include hardship as part of that analysis.
- g. In this case, the hardship is with the size of the lot, the large amount of frontage, and the uniqueness of the site.

ii) *Position of the Development Officer, Mr. C. Kennedy, who was accompanied by Mr. H. Luke*

- [42] Mr. Luke referred to the APSA letter for temporary signs. He understood that when the *Edmonton Zoning Bylaw* changed from the Land Use Bylaw, they were aware of the DC Zone approved by City Council and could not be changed from the revision of the Land Use Bylaw.
- [43] They understood that, and needed to find a compromise from the City in its absence of rezoning and tried to compromise or provide an interim solution. If they followed the directions of Council and the current DC2, they would not be allowed to look at the four signs. They would have to determine if the Board could even hear the appeal.
- [44] The 2013 portable sign regulations were part and are still part of the current zoning.
- [45] Section 79 for this DC2 was to use the Land Use Bylaw and grant a variance from one sign to four signs, which were agreed upon with meetings with the APSA.
- [46] With regard to the authority to grant a variance. There are clauses that the Development Officer can or cannot vary.
- [47] Applying the General Provision of section 11.4 and 11.5 does not apply to Direct Control Zones.
- [48] Council's direction is to determine the appropriateness, the number of signs, and proliferation of signs on a site.
- [49] The proposed development exceeds their authority to grant variances.

- [50] Mr. Kennedy stated that he referred to the DC2 and section 79D of the Land Use Bylaw when reviewing the development permit application.
- [51] There is a separate definition for temporary signs that excludes portable signs. He did not use that when reviewing the proposed development permit application as it is not the type of sign they are reviewing.
- [52] He reviewed the distance between the number of signs and the restriction of more than one portable sign on a site. Only one portable sign will be allowed if the directions of Council were followed.
- [53] Additional regulations were reviewed for the time lapse of more than one portable sign.
- [54] He applied discretion to allow four signs on the site rather than six due to the policy for signs.
- [55] There are six Freestanding Signs on the subject site and approving four more signs will make it a total of 10 signs which is significant for one site.
- [56] In their opinion, a hardship is difficult to determine for temporary signs.
- [57] Although the site is large, Council has given direction to limit the number of signs in a DC Zone.
- [58] When reviewing sign applications, they consider the sign regulations to make sure there is no proliferation of signs.
- [59] Mr. Luke and Mr. Kennedy provided the following information in response to questions by the Board:
- a. Using discretion is consistent within Sustainable Development when looking at the merits of the site. In their opinion, the Applicant should provide reasons to why a variance should be granted.
  - b. There was no request to justify why this variance should be granted.
  - c. They considered that the reason for the proposed signs was the inability for businesses to have advertisement signs.
  - d. The policy discussion comes from the *Edmonton Zoning Bylaw* that was in place at the time in 2013 when negotiations were taking place.
  - e. Mr. Luke does not believe a variance should be granted as they are following the policy with the APSA. If they did not follow this policy, they would follow the regulations of the DC2 and the direction of Council.

- f. A new Development Permit application is required if the duration of existing signs on the site expire.
- g. A different Development Officer could have approved the six signs previously. Each case is different.
- h. They confirmed that the suggested conditions are regulations of the *Edmonton Zoning Bylaw* that need to be followed.

*iii) Rebuttal of the Appellant, Ms. J. Agrios*

- [60] A Development Officer has authority to grant a variance as the four signs that were refused were previously granted.
- [61] The authority for the Development Officer is laid out in section 11.5 and 750.4 of the Land Use Bylaw.
- [62] Section 750.4 states that all general administrative clauses are deemed to be part of a DC unless excluded.
- [63] She visited the site and found six pylon signs. Several signs on a large site is not significant.
- [64] She agrees that the proliferation of signs should be considered. However, the Development Officer did not look at the site and the area and find that there were too many signs. These are considerations that should be looked at but were not.
- [65] The Development Officer should be looking at the specifics of the site rather than applying a policy that was not approved by Council and does not take into consideration of the site.
- [66] The Board does not have information of the other sites, the location, the frontage, and size. Being consistent with other sites is not the test of the Board.
- [67] Until this application, six signs were approved on the site. That had nothing to do with any changes in the area, the number of signs, and proliferation.

**Decision**

- [68] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

1. The two Portable Signs are approved starting October 5, 2018 and shall be removed on or before April 5, 2019.

[69] In granting the development the following variances to the *Land Use Bylaw 5996* are allowed:

1. Section 79.9(3)(b)(iii)(a) is waived to allow two additional Signs.
2. Section 79.9(3)(b)(iii)(b) is waived to allow the duration of the two additional Signs to extend to April 5, 2019.

### **Reasons for Decision**

[70] The Board is bound by section 685(4)(b) of the *Municipal Government Act* that states:

Despite subsections (1), (2) and (3), 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.

[71] Therefore, the Board must first determine if the Development Authority followed directions of Council.

[72] The Board determined that based on the evidence provided, the Development Authority did not follow the directions of Council for the reasons that follow.

[73] The Board heard directly from the Development Officer and the Supervisor in attendance at the hearing that their belief and interpretation of the *Land Use Bylaw 5996* (the "5996 Bylaw") was that they did not have power to vary or the discretion to vary the regulations and therefore did not consider varying the application.

[74] The Board does not support this interpretation and finds that by not considering granting variances required for this application, is in contravention of the directions provided by Council at the time of the Direct Control District (the "DC").

[75] This particular DC was created prior to the current *Edmonton Zoning Bylaw 12800* and there is specific reference in the DC language that stipulates section 79 of the *5996 Bylaw* shall be used for Sign regulations.



[76] The Board finds that section 2.7 of the *Edmonton Zoning Bylaw* is a transitional provision between *Land Use Bylaw 5996* and the *Edmonton Zoning Bylaw 12800*. This finding is supported by the Alberta Court of Appeal decision, *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309. Paragraph 4 of the Alberta Court of Appeal decision states:

On its correct interpretation, section 2.7 does not override section 2.4. Section 2.7 is only intended to deal with a situation where a Direct Control bylaw passed before 2001 contained an express cross-reference to a provision of the old Land Use Bylaw [...]

[77] The Board confirms based on *Parkdale-Cromdale*, the directions of this DC are to follow the regulations of section 79 of the *5996 Bylaw*.

[78] Once it is determined that the *5996 Bylaw* is required to review this application, other regulations within the *5996 Bylaw* apply, specifically section 750.4(3)(b) for Site Specific Development Control Districts that grants the Development Authority the opportunity to consider variances based on the specific general administrative clauses in the *5996 Bylaw*.

[79] The Board also considered that contained within the reasons for refusal by the Development Authority was a reference to an internal policy of Sustainable Development on how Portable Signs are to be reviewed. It contained different considerations than the regulations of the *5996 Bylaw* stipulated in affect at the time of the creation of this DC. This policy was created many years after the DC and should not have been considered as this is clearly not a direction of Council.

[80] Section 11.4(4) of the *5996 Bylaw* states:

The Development Officer shall receive all applications for development may relax a regulation in a Land Use District or other Section of this Bylaw in accordance with the regulations contained in that District or Section, or may relax regulations in accordance with Sections 11.5 and 11.6, and in such case, the use applied for shall be deemed a Discretionary Use.

This section provides the Development Officer the authority to consider varying regulations within the *5996 Bylaw*. Therefore, based on the above, the Board is satisfied that the Development Authority did not follow the directions of Council by not considering the power to vary in this application.

[81] Therefore, the Board must make a conclusion pursuant to *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 and assume the same rights and obligations of the Development Authority to consider variances. The Board has looked and considered the variances in this application pursuant to section 11.5 and 11.6 of the *5996 Bylaw*.

[82] Section 11.5 states:

The Development Officer may approve, with or without conditions, an application for development that does not comply with this Bylaw:

- 1) where the proposed development would not, in his opinion:
  - a) unduly interfere with the amenities of the neighbourhood; or
  - b) materially interfere with or affect the use, enjoyment or value of neighbouring properties; and
- 2) the proposed development would, in his opinion, conform with the use prescribed for that land or building in this Bylaw.

[83] The Board analyzed section 11.5 and determined that the addition of two more Portable [Temporary] Signs (one per application) does not materially impact the neighbourhood for the following reasons:

- a. The subject Site consists of four parcels of land that is approximately 23 acres in size and has approximately 650 to 700 metres of Frontage. Given the existing six Freestanding Signs and four Portable Signs over a large 23-acre Site and long road Frontages, the Board does not believe the addition of two Portable Signs will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- b. It is important to note that the subject Site is at the corner of 137 Avenue and St. Albert Trail and has two distinctive Frontages, east to west and north to south. Further, it is important to note that not all the Portable Signs will be seen at the same time by travelling on St. Albert Trail or 137 Avenue.
- c. The Site has had six Portable Signs with legal permits since 2013 with no known or registered complaints.
- d. It was the position of the Development Authority that by allowing these proposed Signs that it would somehow lead to the proliferation of Signs on the Site. However, it was not within the reasons for refusal and ought to have been included in analyzing whether or not exercising their powers to consider a variance for this Site would have been appropriate. The Development Authority is keenly aware of the existence of Portable Signs on this Site as the Appellant has provided evidence that there have been approximately 44 Sign applications with six Portable Signs being approved since 2013 which, indicates that this Site has been rigorously reviewed for Portable Sign applications.

- e. The Development Authority has approved four of the six Signs for this Site which indicates that for those four approved Signs, the Development Authority did exercise some discretion in granting variances for those Signs.
- f. This specific Site design has an interior building orientation and what is viewed from the exterior of the site is the back of the buildings where some façade Signs exist that will allow the public to see what facilities are on Site. However, this does not allow for businesses and locations inside the Site to be seen from St. Albert Trail and 137 Avenue.
- g. *Bylaw 5996* limits the number of Freestanding Business Identification Signs to five and the Board was provided evidence that those Signs cannot provide enough ad-copy space to promote all of the businesses on Site. Based on photograph evidence, the existing landscaping provided has matured and in some cases may obstruct the vision of the Portable Signs.
- h. Based on the documentation provided, this Site is entirely surrounded by industrial uses and commercial uses and there are no residential uses in close proximity to the subject Site.
- i. Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

[84] The Board analyzed section 11.6(1) of the *5996 Bylaw* that states:

In approving an application for a permit pursuant to Section 11.5 the Development Officer shall adhere to the following:

- 1) a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the use, character, or situation of land or a building, which are not generally common to other land in the same District.

[85] The Board has concluded based on the above, a hardship exists with the DC itself given the inability for this large Site to be fully utilized and that there are other zoning opportunities that would allow the potential for significantly more Portable and other Signs on this Site. In addition, with the limited number of Freestanding Signs allowed within the DC and the interior configuration of some commercial spaces provides a hardship to these businesses by not being able to provide some type of Signage to advertise their locations and services. While the board understands that this may be speculative in nature, it is a real and important distinction that given the Site size and length of Frontage that allowing only four Portable Signs appears unreasonable.

- [86] Although the decision of the Development Authority did not state that Sign proliferation was an issue it did provide verbal testimony that Sign proliferation is a concern for this Site. However, the Board does not support this conclusion given with other types of Zones available for this Site, such as the CSC Zone, would increase the number of Signs allowed indicates that Sign proliferation does not exist on this particular Site.
- [87] Based on the above, the appeal is allowed and the development to allow two Portable [Temporary] Signs is allowed.

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

Board Members in Attendance:

Mr. A. Peterson; Ms. K. Think; Mr. R. Hachigian

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. C. Kennedy / Mr. H. Luke  
/ Ms. A. Rowan

**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.*