



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 18, 2018
Project Number: 239266160-001
File Number: SDAB-D-18-137

Notice of Decision

- [1] On September 6, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 13, 2018. The appeal concerned the decision of the Development Authority, issued on August 1, 2018 to refuse the following development:

Construct an Accessory building (rear detached Garage with loft, 11.76 metres by 6.21 metres)

- [2] The subject property is on Plan 1854HW Blk 7 Lot 22, located at 11826 - 59 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Montrose/Santa Rosa Area Redevelopment Plan apply 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, Mr. & Mrs. Van Elst:*

- [7] Mr. & Mrs. Van Elst decided to demolish the old dilapidated Garage on their property and build a new larger over height Garage to accommodate the development of a garden suite at some point in the future. This would allow them to take advantage of a \$25,000 municipal grant to support the development of different housing choices in the neighbourhood.
- [8] Discussions were held with Development & Zoning Services and they were advised to apply for a development permit for a detached Garage to get the process started. The initial plans included a loft area to enable the future conversion if it were to occur.
- [9] A contractor was hired to add an additional six inches of concrete to the existing concrete pad to support the proposed larger Garage.
- [10] This neighbourhood is currently experiencing a great deal of redevelopment. Two skinny houses have been developed on the immediately adjacent lot as well as numerous oversized and over height Garages along the rear lane.
- [11] At a later point, Development & Zoning Services advised them to reapply for a development permit for a Garage with a Garage Suite because the height requirements are different.
- [12] This process has taken over two years and they are confused about how to proceed. They are prepared to make whatever changes are necessary in order to receive a development permit to finish the project. The existing Garage has already been demolished and the new footings, concrete floor and partial Garage walls exist as shown in their photos.
- [13] Mr. Van Elst provided the following information in response to questions from the Board:
- a) Approval is being sought for the construction of a Garage with a mezzanine (loft) level that will be used for storage. A Garden Suite may be developed in the future as finances allow.
 - b) The Garage that was demolished was serviced with electricity, water and gas.
 - c) The proposed development was discussed with neighbours and they are aware of the proposed height of the building. A petition of support signed by the neighbours and the Community League was submitted. The two most affected neighbours support the proposed development.

- d) There are two properties across the lane from their rear lot line. They spoke with one neighbour who resides across the rear lane and supports the proposed development. The other property is currently being sold and no one could be contacted. No signatures associated with either of these properties are included in their materials.
 - e) All of the houses in this neighbourhood have rear detached Garages.
 - f) The municipal grant is still available for residents who develop Garden Suites to be used as rental properties. Their initial plan was to develop the suite to provide housing for a family member.
 - g) Photographs were referenced to illustrate the current state of the Garage building and the surrounding concrete work that has been completed.
 - h) A contractor and engineer were consulted before the existing concrete pad was extended by six inches.
 - i) The Development Officer did advise them that there are different regulations for the development of a Garden Suite. However, they are not prepared to develop a Garden Suite at this time.
 - j) Many different development options have been suggested, but they just want to complete the project even if approval is only granted for the construction of a Garage. They understand that the regulations for Garages and Garden Suites are different and that the structure might not comply with Garden Suite regulations or be approved as a Garden Suite. Nonetheless they want to proceed with the Garage application only so that they can finish off the existing partial construction in the rear yard.
 - k) The recommended conditions submitted by the Development Officer will be met and they are not opposed to an additional condition that the proposed loft space cannot be used as an additional Dwelling. At this point, they do not intend to develop a kitchen or a bathroom in the loft space.
 - l) An aerial photograph was referenced to confirm the location of two large oversized Garages that have been built across the rear lane from their property. Information regarding the issuance of development permits for Garages on nearby properties could not be provided.
- [14] They offered to alter the plans and remove the loft area entirely. However, the Presiding Officer clarified that the Board will only consider the plans that were submitted and reviewed by the Development Officer.

ii) *Position of the Development Officer, Mr. K. Yeung:*

[15] Mr. Yeung did not appear at the hearing and the Board relied on his written submission.

Decision

[16] 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** as proposed by the Development Authority and reviewed by the Appellants:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. Under the terms of this Development Permit for an Accessory building (rear detached Garage with loft), the proposed loft space shall not be used as an additional Dwelling Unit.
3. Eave projections shall not exceed 0.46 metres into required yards or Separation spaces less than 1.2 metres (Reference Section 44.1(b)).

ADVISEMENTS:

1. Driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.
2. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.
3. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

1. The maximum allowable Height of the Garage (to midpoint) of 4.3 metres per Section 50.3(3) is varied to allow an excess of 2.3 metres, thereby increasing the maximum allowed to 6.6 metres.

2. The maximum Height of the Garage (to peak) of 5.8 metres per Section 52.2(c) is varied to allow an excess of 1.8 metres, thereby increasing the maximum allowed to 7.6 metres.
3. The maximum allowable Site Coverage for the proposed Garage of 12 Percent per Section 140.4(10) is varied to allow an excess of 4 Percent, thereby increasing the maximum allowed to 16 Percent (in accordance with the stamped and approved drawings).
4. The Garage is not fully contained within the rear 12.8 metres of the Site as required per Section 814.3(21). A variance is granted to allow an excess of 3.8 metres, thereby allowing the Garage to be fully contained within the rear 16.6 metres of the Site.

Reasons for Decision

- [18] The proposed development is Accessory to a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [19] The scope of the development permit application before the Board is to construct an Accessory building (rear detached Garage with loft, 11.76 metres by 6.21 metres) and does not include the development of a Garage Suite.
- [20] The proposed development has not been assessed by the Development Officer or the Board for approval as a Garden Suite Use. Converting the loft space in the rear detached Garage to a Garage Suite will require a separate development permit application and the submission of plans to be vetted and reviewed by the Development Authority in accordance with the proper process.
- [21] The proposed development requires four variances: two for Height, one for Site Coverage and one for the placement of the Garage in the rear portion of the Site.
- [22] The Board grants the required variances for the following reasons:
- a) The proposed development received a high level of community support:
 1. Even though Community Consultation was not required, the Appellants attempted to contact all of the neighbours who reside within the 60 metre notification radius.
 2. Twenty-one signatures of support were submitted, including those of the two most directly affected neighbours who each share a Side Lot Line with the subject Site.

3. Signatures of support were not provided from neighbours who reside across the rear lane. However, evidence was provided that one of these property owners gave verbal support and the other property is currently up for sale and the owner could not be contacted.
 4. All property owners within the 60 metre notification radius received notice of the appeal hearing which outlined the scope of the development permit application and the required variances. No letters of support or objection were received. No one attended the hearing to oppose to the proposed development.
- b) Significant amenity area will remain in the rear yard after the proposed Garage is constructed. It is set back 5.15 metres from the South Side Lot Line reducing its impact on the adjacent lot to the south. The proposed Garage is located 0.95 metres from the North Side Lot Line, however the majority of the building is directly across from the rear detached Garage currently in place on the Lot to the north. Further, the separation distance between the principle dwelling and the proposed Garage is 5.39 metres.
 - c) The evidence provided indicates that there are several other oversized and potentially over height Garages located on nearby properties, including at least two four-car Garages in the immediate vicinity (one directly across the rear lane). However, the Board placed little weight on this factor as the Appellants could not provide details concerning the legality and exact dimensions of those Garages.

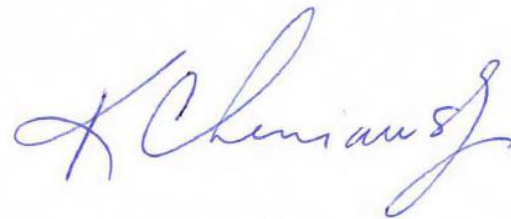
[23] With respect to the Site Coverage variance in particular, the Board also considered that while the proposed Garage exceeds the maximum allowable 12 percent, the total Site Coverage for the Principal Building and the Accessory Building is 159.85 square metres which is less than the maximum allowable 183 square metres.

[24] It became clear during the hearing that the Appellants had been confused about whether to apply for a Garage or a Garden Suite and that the Appellants' long-term plans may include converting the proposed loft area to a Garden Suite.

[25] The Appellants also clarified:

- a) They are currently seeking approval for an Accessory building (rear detached Garage with loft) not a Garden Suite.
- b) The building has existing electrical and water services.
- c) The proposed development will be built in accordance with the submitted plans which were refused by the Development Officer.

- d) The loft area will be used to provide extra storage. It is not intended to be used as a Dwelling Unit.
 - e) They do not object to the imposition of a condition prohibiting the use of the loft space as an additional Dwelling Unit.
- [26] Therefore, for clarity, a condition has been imposed on this Development Permit, that the proposed loft space cannot be used as an additional Dwelling Unit.
- [27] For the reasons above, the Board concludes that the proposed development, with the conditions imposed, 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.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. D. Fleming, Ms. P. Jones, Mr. A. Peterson, Mr. J. Wall

c.c. City of Edmonton, Development & Zoning Services, Attn: Mr. K. Yeung/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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Date: September 18, 2018
Project Number: 282709018-001
File Number: SDAB-D-18-138

Notice of Decision

- [1] On September 6, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 8, 2018. The appeal concerned the decision of the Development Authority, issued on July 30, 2018 to refuse the following development:

Install (1) Freestanding Minor Digital On/Off-premises Sign (V-shaped includes two digital panels 3 metres by 6 metres facing North and Southeast (St. Paul's Evangelical Lutheran Church - Big Sky Media)

- [2] The subject property is on Plan 8221657 Lot 5, located at 5004 - Ellerslie Road SW, within the US Urban Services Zone. The Charlesworth Neighbourhood Structure Plan and Southeast Area Structure Plan apply 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 including a PowerPoint Presentation.

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

- Exhibit A –Presentation notes submitted by St. Paul’s Evangelical Lutheran Church

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, Ms. D. Claerhout, representing St. Paul’s Evangelical Lutheran Church – Ellerslie and Mr. K. RoCHAT, representing Big Sky Media:*

[8] Ms. Claerhout was a member of the Church Council when the digital sign project began. She has been working with the congregation, Big Sky Media and the people involved in planning the proposed Church expansion.

[9] The Church congregation elects members to sit on Council to take care of the day to day business of operating the Church. For all major decisions, Council does the legwork and then the matter is taken to the congregation for a vote. At an annual general meeting in 2017, the congregation voted to approve the installation of a 3 by 6 metre digital sign on the Southeast corner of the Church site.

[10] The proposed digital sign is part of a larger plan to expand the entire Church facility. The Church was built in 1936, an addition was added in 1985. It has been outgrown again. A great deal of time and effort has been put into developing an expansion plan and a major challenge is the funding. A mortgage is required and to qualify a revenue stream is required that is not based on monetary donations from church members. The lease agreement for a digital sign, along with the existing cell towers will provide that type of income.

[11] The proposed digital sign will work well for the Church because the third party advertising generates a sizeable annual payout. The lease agreement has a 10 year term with the option to renew. There is no initial capital outlay to construct the sign. The church is not responsible for the operation of maintenance of the sign. The sign will replace the outdated vinyl letter message board currently used and will provide infinite messaging possibilities. The brick base will include signage for their building.

[12] The size of the proposed digital copy dimensions are an industry standard that large corporations require for advertising. Therefore, if this standard is not used, Big Sky Media will not sell any third party advertising and without that, it is not economically feasible for them to construct the sign.

[13] In order to make a digital sign fit in well with the Church property that contains two historically significant buildings, they worked with an Architect who took care to honour the old buildings and cleverly bridge them with the new. The choices made in building style, layout of the site, colours and materials all help to maintain the original buildings as focal points on the site. The design of the sign was therefore just an extension of these ideas to be sympathetic and respectful to the historic buildings.

- [14] The proposed sign is located as far away as possible from the Church. It will be located on the opposite side of the new Church facility so it will not interfere with the front façade of the historic buildings which will remain the focal points of the property. A parking lot is proposed between the sign and the church facility to create even more separation space and the sign will be located close to the gym or fellowship hall which will be the largest structure on the Site. In this way, the size of the sign will not look out of proportion with the surroundings and buildings.
- [15] The original building materials chosen for the base of the sign were red brick and grey masonry to tie in with the exterior of the entire church facility. A request was made by the Heritage Officer to have the base entirely constructed of red brick.
- [16] The Church site is surrounded by 76 acres of retail development as illustrated in the aerial photographs. This neighbourhood is no longer rural, but decidedly urban. There are and will be big box stores, restaurants, services and their accompanying signs located all around the entire church site. Therefore, the proposed digital sign will not seem out of place in this environment. The proposed sign is no larger than the four Harvest Pointe shopping centre signs already in place along Ellerslie Road and 50 Street. The base of the proposed sign is similar to the base used for these existing signs as illustrated in the photographs provided. Therefore, the proposed sign will integrate well and is characteristic of this neighbourhood.
- [17] The Church is willing to consider any other design elements during this planning process that the City feels will contribute to a positive interface between the proposed sign, the historic buildings on the site, the church expansion and surrounding development.
- [18] The Church and the City are on the same page when it comes to heritage preservation. The two historic buildings on the property are an important part of the Church history and the congregation is passionate about preserving them. Cameron Developments offered to purchase the site in 2016 for a substantial amount of money, but it would have meant losing their red brick church. The congregation rejected the offer in order to keep the church.
- [19] The brick church is on the Inventory of Historic Resources, but it is not designated.
- [20] As much as the congregation loves the historic church buildings, the fact that 2018 church is being conducted in a 1936 building cannot be ignored. The unprecedented growth in the surrounding neighbourhoods has led to growth in the congregation and the proposed comprehensive expansion is required to meet the needs of the congregation as well as the many other community groups. The vision of the church is to be fully engaged with the community and grow with it.

- [21] The church is at a crossroads and can go one of two ways; it can grow and remain a vibrant part of the developing new community or do nothing, stagnate and fold like so many other churches have done in the recent past. If this happens, the property and assets would be sold and the historical buildings lost.
- [22] The proposed sign is an integral part of the expansion plan. It would be a win for all involved because the church will finally have enough functional space to serve the needs of the congregation now and into the future. The larger community will have access to space for meetings, preschool, and recreation at no cost to the City. Edmonton will also preserve a little piece of heritage by enabling the required revenue stream.
- [23] Mr. Rochat addressed the three reasons for refusal identified by the Development Officer. It was his opinion that the proposed sign, including the digital and identification signage for St. Paul's Evangelical Lutheran Church, is within the maximum allowable 20 square metres of Sign area. He referenced a previous decision of the Subdivision and Development Appeal Board for an On-premises/Off-premises, in which the Board determined that if a sign has the ability to go back and forth between On-premises (first party) messaging and Off-premises (third party) messaging then the sign was allowable, and measured against the toughest Bylaw. The proposed sign will communicate church messages, including service times and school times that will be paid for by Big Sky Media.
- [24] St. Paul's Evangelical Lutheran Church was placed on the Inventory of Historic Resources by the City of Edmonton. The congregation has a plan to maintain and build the congregation as well as the community. There are numerous examples of buildings on the Historic Resources List with signs that have a sign area of 18 square metres or more. The proposed sign has been redesigned at the request of the Heritage Planner and is in keeping with the land use characteristics of surrounding development.
- [25] The proposed sign is in keeping with the Appellants' overall design plans and the retail space that engulfs the church site. It will provide messaging for the church in a professional clear manner.
- [26] Even though the proposed development exceeds the maximum allowable Area of 8.0 square metres, it does not exceed the 20 square metres maximum allowable combined Area of Digital Sign Copy and other types of Copy, pursuant to section 59C.3(4)(c)(ii).
- [27] A Freestanding On-premises Sign, which the proposed development is, is allowed to have a maximum Area of 20 square metres.
- [28] Under Schedule 59E, the maximum Area of Freestanding Off-premises Signs shall be 20 square metres. This provision should be applied to the proposed development.

- [29] There are no third party digital advertising signs on Ellerslie Road or 50 Street within four kilometres of the proposed sign. Every attempt has been made to find a balance between the size, design and location of the proposed sign.
- [30] The church and TELUS would be allowed first party signage. TELUS is a tenant on this site and with agreement from the Church would be allowed to erect a 10 foot by 20 foot sign with up to 20 square metres of sign area on the corner of this site.
- [31] The proposed sign will replace a vinyl message centre currently used by the Church with a digital sign that will display messages as part of their communication plan.
- [32] Numerous photographs and maps were referenced to illustrate that the proposed sign is characteristic of the area and is in fact more sympathetic in architectural design than other digital billboards that are located in close proximity to other sites that are on the Historic Inventory Resource list.
- [33] The City Policy to encourage the Designation and Rehabilitation of Municipal Historic Resources in Edmonton was referenced. The Appellants submitted several photographs to illustrate that the Development Officer's photographs are not indicative of the current situation. The Church is no longer located on a country road as it was when it was added to the Historic Inventory List in the 1990's. The Church site is now completely surrounded with large retail developments. In his opinion the proposed sign is in keeping with the land use characteristics of the neighbourhood.
- [34] Seven examples were provided of buildings that are currently on the Historic Resource list and located in similar or closer proximity to digital billboards than the Church and the proposed sign. In his opinion, none of the signs identified in the examples provided have been architecturally designed to be in keeping with the buildings on the Inventory of Historic Resources list.
- [35] They asked the Heritage Planner if all other buildings on the Inventory of Historic Resource List went through the same process to receive approval for a Digital Sign installation, but he chose not to respond.
- [36] Transportation performed a review in accordance with the Transportation of Canada Digital and Projected Advertising Display (Digital Billboard) Restriction Areas and recommended the sign be moved 6.75 metres north. A revised site plan was submitted on July 27, 2018 to comply with that request, but the application was still refused.
- [37] In sum, the proposed sign is in keeping with all properties along 50 Street and Ellerslie Road and complies with the maximum allowable 20 square metres of Sign Area. There are other buildings on the Inventory of Historic Resources List that are in the same or closer proximity to Digital Billboards owned by various companies in Edmonton.

[38] Mr. Rochat, Ms. Claerhout and Pastor Wachowiak provided the following information in response to questions from the Board:

- a) In this day and age, it is becoming more common for churches to seek other methods of generating revenue. The cell towers on this site do provide some additional income but the proposed sign will generate additional revenue necessary to facilitate the church expansion.
- b) In the submitted examples, digital signs are not located on the church sites.
- c) None of the existing signs along Ellerslie Road or 50 Street are located within 100 metres of the proposed sign. The closest sign is approximately 105 metres away. The sign complies with all required separation distances.
- d) The proposed sign was moved 6.25 metres to the north at the request of Transportation Services.
- e) They do not oppose the imposition of a condition that limits the size of the identification portion of the proposed sign. The total sign copy area is 20.0 square metres according to their application.
- f) Many of the neighbouring business owners signed a petition of support for a previous appeal hearing at was held in 2017 which was also for a digital sign 3 metres by 6 metres in size. However, they were not contacted regarding this application.
- g) There is a Rugby Park located across Ellerslie Road from the subject site and a City of Edmonton Transit Centre is going to be developed kitty corner to the subject site.
- h) An aerial photograph was referenced to illustrate that the subject site is surrounded on the north, west and south by large commercial developments.
- i) The proposed sign is different than the one which was the subject of the prior hearing. It incorporates significant architectural features. After the previous application, the church worked with a professional Architect to layout the site and to select colours and building materials for the sign that will complement the historic buildings. The sign will not be the focal point of the site and will provide a transition between the commercial sites and the subject site. Parking and other buildings are proposed to separate the sign from the church building in the future.
- j) Photographs of the signs on the Harvest Pointe shopping centre are also mounted on a red brick base. While they have no direct knowledge and the developments proceeded independently, they believe the red brick may have been deliberately chosen for these other signs to complement the church. They propose to do the same.
- k) All of the recommended conditions provided by the Development Officer will be met.

- [39] Pastor Wachowiak advised the Board that the church wants to be an asset to the community that has grown up around it.
- [40] Not only will the proposed sign provide an opportunity to advertise church events and programs, the revenue generated will allow the church to expand and service the surrounding community.
- [41] The proposed expansion is not yet at the development permit stage.

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

- [42] The Development Authority did not appear at the hearing and the Board relied on Ms. Noorman's written submission.

Decision

- [43] 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** as proposed by the Development Authority and reviewed by the Appellants:
1. Prior to the review and issuance of the Building Permit and installation of the proposed sign, the applicant shall demonstrate, to the satisfaction of the Development Officer that the existing Freestanding On-premises Sign as identified in the application submitted is removed from the site and cleared of all debris.
 2. The permit will expire on September 18, 2023.
 3. The proposed Minor Digital On-premise Off-premises Sign shall be constructed in accordance with the approved plans.
 4. 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)).
 5. 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)).

6. All Minor Digital On-premises Off-premises Signs shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12)).
7. The following conditions, in consultation with Subdivision Planning department, shall apply to the proposed Minor Digital On-premises Off-premises Sign, in accordance to Section 59.2.11:
 - a) The permit will expire on September 21, 2023. The applicant shall apply for a new development permit for continued operation of the sign.
 - b) That, should at any time, 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, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to City Operations.
 - c) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by 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 de-energize the sign.
 - d) 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. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2)
- [44] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The maximum allowable Area of the Freestanding Minor Digital On-premises Off-premises Sign of 8.0 square metres as per Section 59C.3(4)(c)(ii) is varied to allow an excess of 10.0 metres, thereby increasing the maximum allowed Area to 18.0 square metres.

Reasons for Decision

- [45] The proposed development, a Minor Digital On-premises Off-premises Sign, is a Discretionary Use in the US Urban Services Zone. It requires a variance to the maximum allowable area for Digital Copy. The subject Site falls within the Southeast Area Structure Plan.
- [46] The Development officer cited sections 59C.3(4)(c)(ii), 59.2(6) and 59.2(7) of the *Bylaw* in the refusal and denied the application for three reasons according to her written submission:
- a) The Digital Sign Copy area is 18 square metres which significantly exceeds the maximum allowed Area of the Digital Sign Copy.
 - b) There are two historically significant churches on the Site and the sign is not in keeping with the land use characteristics of surrounding development and will adversely impact the amenities and character of the Zone.
 - c) This development is not reasonably compatible with, or sympathetic to, the architectural theme of the subject Site or the historically significant architecture of the churches.
- [47] The Board notes that a decision was previously issued by the Board on July 14, 2017 confirming the refusal of a development permit application to install a Freestanding Minor Digital On-premises Off-premises Sign (two digital panels facing North/Southeast, 6.1 metres by 3.0 metres) and remove the existing Freestanding On-premises Sign on the subject Site. The Board refused the proposed Discretionary Use on that occasion due to its size and design. It determined that “the proposed sign was not sympathetic to the architectural theme of the subject site or the historically significant architecture of St. Paul’s Evangelical Lutheran Church or the smaller Lutherhort Bestal Church that have existed on this site since 1898”.
- [48] The Board notes that it is not strictly bound by precedent and must consider each case individually on the merits based on the evidence and representations presented at the time of the appeal. In this case, the Board made its determination based on the submissions of the parties, the revised design and the most current pictures of the subject Site and its immediate surroundings.
- [49] The subject Site is a large rectangular lot approximately 140 metres by 80 metres in size. St. Paul’s Evangelical Lutheran Church and Lutherhort Bestal Church are located on the subject Site and face Ellerslie Road. The two historical church buildings are surrounded by mature landscaping (including a perimeter of evergreen trees). This buffer separates them visually from the remainder of the subject Site which contains a house with two detached garages (which are to be torn down), additional parking areas, and a large telecommunications tower and smaller associated accessory buildings surrounded by a chain link fence.

- [50] Section 687(3)(a.2) of the *Act* directs that in determining an appeal, the Board must comply with all applicable statutory plans. The Southeast Area Structure Plan applies in this case. It indicates that the subject Site is to be for a religious assembly Use and is also to be surrounded by much larger sites designated for large scale commercial uses, institutional/city level parks and a transit Park ‘n Ride site. The submitted evidence affirms that this area is transforming from a country to an urban environment. In accordance with the Plan, the formerly predominantly agricultural area is rapidly being replaced by these anticipated commercial and institutional uses.
- [51] The Board also considered Sections 59.2(6) and (7) of the *Bylaw* in deciding whether the proposed development is an appropriate Discretionary Use at this location because these development regulations deal with compatibility and the Development Officer’s discretion. Section 59.2 provides:
- (6) For all Sign Applications, the Development Officer shall have regard for the scale and architectural character of the building and the land use characteristics of surrounding development. The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone.
- (7) For all Sign Applications for Major Digital Sign, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs, the Development Officer shall review the application in context with the surrounding development, such as (but not limited to): the architectural theme of the area; any historic designations; the requirements of any Statutory Plan; any streetscape improvements; proximity to residential development; driver decision points; and traffic conflict points. The Development Officer may require application revisions to mitigate the impact of a proposed Sign, and may refuse a permit that adversely impacts the built environment.
- [52] St. Paul’s Lutheran Church is on the Inventory of Historic Resources in Edmonton. The Lutherhort Bestal Church is not on this inventory, however it is specifically referenced in section 3.6 of the Plan which states:

“Two churches, Lutherhort Bestal and St. Paul’s Evangelical Lutheran Church, are located within S1/2 SE 26-51-24-4 of Charlesworth, north of Ellerslie Road west of 50 Street. Although it is not on the Inventory of Historic Resources in Edmonton, the Lutherhort Bestal Church was built in 1898 (relocated from another location) and has served this community since early settlement. Adding to the cultural history of this site is St. Paul’s Evangelical Lutheran Church, which is located within the same overall church site. This second structure is one of the few solid civic structures in the area, and is of particular architectural note. Future urban development siting and interface will be sympathetic to both church sites”.

- [53] The churches are also mentioned at section 5.4.2 of the Plan under the heading Land Use Concept which provides in part:

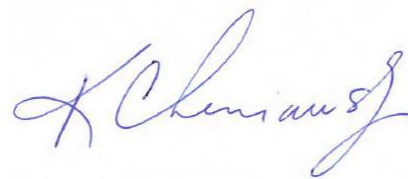
“Opportunity exists to integrate and or otherwise adapt identified heritage resources within the Southeast ASP where feasible and practicable...In terms of the church site, particular attention will be given to the siting and interface of future urban development. Special consideration will be given to site treatments (e.g. setbacks, landscaping, screening) that afford visual transitional to, and enhancement of the church site with the Community Commercial area.”

- [54] The Board finds that attention has been paid to siting of the proposed development on the subject Site. It is to be located more than 80 metres from the church buildings at the south east corner of the subject Site abutting the intersection two major divided roadways: Ellerslie Road to the south which services approximately 23,300 vehicles per day and 50 Street to the east which services approximately 17,600 vehicles per day. It will be closer to the transit Park ‘n Ride facility and commercial developments to the south than to the churches.
- [55] The proposed location will be visually separated from the churches by a buffer of intervening mature landscaping (including the large evergreen trees) and the several existing on-site buildings and structures. The Board notes that the proposed development is compatible with these other closer existing on-site developments. The Board received evidence that if the Appellants’ overall plan is implemented ,this separation will be even greater when larger scale buildings and a parking lot are constructed. However, the Board gave little weight to the future plans as they are in the development stage and no formal applications have been submitted or vetted to date.
- [56] The Board considered the architectural design and building materials used in the proposed development. The Board notes that the 2017 Board decision gave particular emphasis to the fact that the proposed Digital Sign in that appeal was composed of two digital screens that faced opposite direction supported by a single pylon constructed of steel and cement with no architectural design features whatsoever. Subsequent to the 2017 appeal, in consultation with an architect, the Appellants added architectural features to the proposed Sign to recognize and respect the architectural “language” of the historic churches and the original rural setting.
- [57] The current plans include a substantial base to be constructed using building materials similar or complimentary to the historical buildings. At the request of the Heritage Planner for the City of Edmonton, the base of the Sign was revised, it will be finished entirely using red brick reflective of the brick used for the St. Paul’s Evangelical Lutheran Church.
- [58] The Board finds that with these changes the proposed development is, as much as practicable, sympathetic to the architectural character of the historic churches and provides a transition to the reality of the burgeoning urban growth occurring all around it.

- [59] The Board also received evidence that several Freestanding On-premises Signs associated with the adjacent commercial shopping centres have also been finished with red brick similar to the church, presumably to meet the intent of the Plan. While none of these Signs are Digital Signs, several are comparable in Area and are located in closer proximity to the churches than the proposed development.
- [60] The Board considered the scale of the proposed development and land use characteristics of surrounding developments.
- [61] The Board noted that the Heritage Officer was of the opinion that the proposed Sign is of an excessive scale, to the extent that it does not contribute to a positive urban interface and transition between the Church Site and the future surrounding urban development. The Board disagrees.
- [62] The proposed development will be located 80 metres from the churches and will be visually screened from them. It is to be located in closer proximity and within direct sight of a large and much taller telecommunications tower and of the commercial developments to the south. The photos show that while the subject Site is large, it is a tiny island in the middle of the growing commercial neighbourhood currently under construction. The subject Site is surrounded on three sides by 753,000 square feet of large scale retail development which includes buildings much larger than the churches, large parking areas and signage on a scale comparable to the proposed development. There is a large rugby recreational facility and City fields to the east across 50 street. The Board finds that the proposed development will not be out of scale with its surroundings.
- [63] The Board notes that the Appellants argued that the development should be approved because there are several other examples of buildings that are currently on the Historic Resource list located in similar or closer proximity to Digital Signs than the Churches and the proposed Sign. The Board placed no weight on these other cases as the Appellant could not provide details concerning the dates of approval or the applicable zoning. In any event, as stated above, the Board considers each case on its individual merit.
- [64] Taking all these factors into consideration, the Board finds on balance that the proposed development is reasonably compatible with the surrounding development and it is not inconsistent with the Plan.
- [65] The Board next considered the required variance to area. In her reasons for refusal, the Development Officer indicated that the required variance is large. While magnitude may be an indicator of impact, it is not necessarily determinative. The Board assesses variances based on the potential for adverse impacts per section 678(3)(d) of the Act.
- [66] The Board allows the variance in the maximum allowable Digital Sign Area per section 59C.3(4)(c)(ii) of the *Bylaw* for the following reasons:
- a) There are no adjacent or nearby residential developments.

- b) The subject Site is surrounded on the north, west and south by large scale commercial developments. The surrounding commercial properties have numerous Signs that are similar in overall Copy Area and finishing materials.
- c) Based on the evidence provided, numerous neighbouring business owners supported the Freestanding Minor Digital On-premises Off-premises Sign as it was proposed one year ago with the same Digital Sign Area.
- d) The Appellants are not aware of any change of heart on the part of their neighbours nor of any new opposition to the proposed development.
- e) No letters of either support or opposition were received by the Board. No one attended to oppose the proposed development.
- f) The proposed Sign is separated from the large recreational developments and the transit Park 'n Ride facility to the east by several lanes of traffic on 50 Street and a berm.
- g) While the proposed development exceeds the maximum allowable 8 square metres Area for a Freestanding Minor Digital On-premises Off-premises Sign, the maximum combined Area of Digital Sign Copy and any other type of Copy included on the same Sign face is within the maximum allowed 20 square metres allowance.
- h) The proposed location is adjacent to the intersection of two major roadways, but no transportation concerns have been noted specific to the size of the Digital Copy Area. Transportation Services reviewed the initial location proposed in the development permit application and requested that the proposed development be setback further from Ellerslie Road. The stamped refused plans reflect this change. After the location was changed Transportation Services again reviewed the proposed development and did not identify any traffic concerns. The Board finds that proposed development does not raise any traffic conflict issues.

[67] For the above reasons, the Board concludes that the proposed development is reasonably compatible with the neighbourhood and that granting the required variance 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.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. D. Fleming, Ms. P. Jones, Mr. A. Peterson, Mr. J. Wall

c.c.

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.