



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: October 13, 2017  
Project Number: 253720148-001  
File Number: SDAB-D-17-166

**Notice of Decision**

- [1] On September 7, 2017 and September 28, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 10, 2017**. The appeal concerned the decision of the Development Authority, issued on August 9, 2017, to refuse the following development:

**Construct a Single Detached House with a front Rooftop Terrace, fireplace, Basement development (NOT to be used as an additional Dwelling), and rear uncovered deck (4.72m x 7.47m).**

- [2] The subject property is on Plan 1226AQ Blk 4 Lot 9, located at 9729 - 96A Street NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay, the North Saskatchewan River Valley and Ravine System Protection Overlay, and the Cloverdale Area Redevelopment Plan apply to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- A grade calculation by the Development Officer;
- The Appellant’s written submissions including photographs and the architectural drawings of the two abutting sites; and
- An on-line response from an adjacent property owner in support of the proposed development.

**Preliminary Matters (September 7, 2017)**

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

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

### **Summary of September 7, 2017 Hearing**

*i) Position of the Appellant, Mr. J. Rodas, speaking on behalf of Platinum Living Homes*

[7] Mr. Rodas has built infill developments in the past and follows the development guidelines for each neighbourhood.

[8] The proposed development will have the appearance of a two-storey development from the street level.

[9] He referred to an elevation drawing of what the proposed development will look like when it is complete. The proposed development will not look any higher than the house south of the subject site.

[10] He made attempts but was unable to keep the development under the 8.9-metre maximum height requirement.

[11] He stated that the lot is not flat and the grade slopes from the back to the front.

[12] He spoke to neighbouring property owners and received 20 responses in support of the proposed development. He attempted to contact the property owners to the north but they do not live there and he was unable to reach them. He does not have written support from the immediate neighbour to the south but received verbal support from them.

[13] The neighbour to the south has a 2.5-storey development and in his opinion, the proposed development will enhance the neighbourhood.

[14] He referred to photographs of the neighbourhood to show the height of the other houses that are similar to the proposed development.

[15] Mr. Rodas provided the following with respect to questions from the Board:

- a. Although the plot plan shows that the property is a flat lot, the surveyor indicated that four risers in the front and two risers in the back will be required for the development since the lot slopes back to front.
- b. With regard to massing, he stated that a sloped roof will look smaller than a house with a flat roof.
- c. The ceiling on the second floor could be lowered to 8 feet but a 9-foot ceiling will fit in better with the design of the house.

*ii) Position of the Development Officer, Ms. H. Vander Hoek*

- [16] Ms. Vander Hoek does not have the authority to vary height; therefore, the proposed development was refused. If there was no variance in height, she would have reviewed the plans further to determine if there were additional variances.
- [17] The proposed front setback meets the minimum front setback requirement of the Mature Neighbourhood Overlay.
- [18] She did not research whether or not the houses on the streetscape were granted variances, or if they were the same design or height as the proposed development. She indicated that some of the neighbouring developments have a third storey loft but no terrace.
- [19] In her opinion, the lot is level and there should be no concern with the grading.
- [20] The house north of the subject site is new and has an excess in the height.
- [21] In her opinion, a two-storey development is characteristic of the neighbourhood but a three-storey development is not.
- [22] In her opinion, community consultation was complete because approximately 50 percent of the houses and the condominium north of the subject site were contacted.
- [23] The houses on each side of the subject site are similar to the proposed development.

*iii) Rebuttal of the Appellant, Mr. J. Rodas*

- [24] Mr. Rodas is agreeable to any conditions suggested by the Development Officer and imposed by the Board.
- [25] He attempted to speak to all the neighbouring property owners but he was unable to reach everyone.
- [26] He reiterated that the lot is not level even though it appears that it is.
- [27] The proposed development is a modern design and he would prefer not to use risers if possible as he would like a flat look.

**Decision**

[28] The Subdivision and Development Appeal Board made and passed the following motion:

That SDAB-D-17-166 be TABLED to September 28, 2017, to allow the Appellant additional time to provide the following:

1. The Appellant must provide the Board the specific Height and Grade calculations of the Principal Building immediately north and south of the subject Site. This includes the peak Height and the floor Height.
2. The Appellant must provide photographs of the entire block face as well as photographs of the frontage of each Principal Building including the subject Site.
3. The Development Officer must provide information to how the Height calculation was made with specific regard to how the Grade average was calculated to confirm how the 9.2-metre Height was determined.
4. This information must be received by the SDAB office no later than September 21, 2017.

**Preliminary Matters (September 28, 2017)**

[29] The Board made and passed the following motion:

"That SDAB-D-16-166 be raised from the table."

**Summary of September 28, 2017 Hearing**

*iv) Position of the Appellant, Mr. J. Rodas, speaking on behalf of Platinum Living Homes*

[30] Mr. Rodas referenced his photographs to show the subject site, the adjacent homes, the block face, and the green space and parking lot immediately to the west.

[31] He referenced the elevating drawings of the house to the north and indicated that it is two storeys with a midpoint height of 8.62 metres. He referenced the elevation drawings of the house to the south and indicated that it is 2.5 storeys with a midpoint of approximately 24 feet (7.32 metres).

- [32] He acknowledged that his proposed house is two to three feet higher than the abutting houses.
- [33] He referenced his lot grading plan and the abutting lot grading plans. In his opinion, his lot creates a hardship because of the difference between the abutting lots. He indicated that the lot to the south is 14 inches higher than his house and the lot to the north is four inches higher than his house. According to his surveyor, he has to build up the middle.
- [34] He reiterated that he had the full support of his neighbours and he feels his house matches with the neighbourhood.
- [35] In his opinion, pedestrians will not be able to tell the difference between the height of his house compared to the adjacent houses, especially with an apartment house down the road.
- [36] Mr. Rodas agreed that the two abutting houses are under the maximum 8.9-metre height requirement.
- [37] The Presiding Officer indicated that the 622.63 corner grade average shown on the lot grading plan should match the subject lot. The Presiding Officer clarified that the four corners Mr. Rodas referenced were not the four corners of the lot but the four corners of the finished grade of the houses. Mr. Rodas agreed that he misinterpreted the numbers on the grading plans.

### **Decision**

- [37] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**.
- [38] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The maximum allowable Height is 8.9 metres. The proposed Height is 9.2 metres and an excess of 0.3 metres is allowed. (Section 814.3(5)).

### **Reasons for Decision**

- [39] The proposed development, a Single Detached House, is a Permitted Use in the (RF3) Small Scale Infill Development Zone.

- [40] With respect to Height, the Board grants the variance for the following reasons:
- a. The Board accepts the calculation provided by the Development Authority as to the Height calculation of 9.2 metres.
  - b. Upon review of the submissions of the Appellant, the Board notes that there is a two-storey House and a 2.5-storey House abutting the subject property.
  - c. The Board when reviewing drawings notes that the over-Height portion is stepped back from the second storey front elevation, which minimizes the visual impact from the street. Based on photographic evidence, the Board was shown that there is a surface parking lot directly across the street to the west of the subject property and therefore has no impact on any residences to the west.
  - d. The Board notes that based on photographic evidence, there is a three-storey walkup Apartment building four lots to the north that appears to be significantly over height compared to the Single Detached Houses along the block face.
- [41] The Board accepts the Development Authority's conclusions that per section 814.5 of the Mature Neighbourhood Overlay, the community consultation was substantial and the Board accepts that this requirement has been met. There was no opposition to the proposed development.
- [42] Within the community consultation, there is agreement from the most affected neighbours, that being to the north and south, who both support this development.
- [43] With respect to 5.2.4.e. of the Cloverdale Area Redevelopment Plan, the Board notes that these are development guidelines and not policies. The Board finds that it is within its authority to vary the guidelines if needed. The Front Setback for the proposed development is 4.5 metres on average and sets within the prescribed limitation in 5.2.4.e. The property to the north, based on a plot plan, has a Front Setback of 4.26 metres, which would fall within the same requirement in this guideline. The Board also notes that the guideline itself provides discretion to the Development Authority.
- [44] The Board upon review of photographic evidence notes both the north and south Houses have full two-storey front facades. Therefore, from the Board's perspective, it makes this proposed development characteristic with the abutting properties.
- [45] Further, the Board notes that the proposed development meets all of the Setback requirements and Site Coverage requirements of the *Edmonton Zoning Bylaw*.

[46] Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

**Important Information for the Applicant/Appellant**

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

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





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Date: October 13, 2017  
Project Number: 124059029-003  
File Number: SDAB-D-17-169

**Notice of Decision**

- [1] On September 7, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 10, 2017**. The appeal concerned the decision of the Development Authority, issued on August 2, 2017, to refuse the following development:

**Install a Freestanding Minor Digital On-premises Off-premises Sign  
(10.36 m x 3.05 m facing south).**

- [2] The subject property is on Plan 8520056 Lot 7, located at 7904 - Gateway Boulevard NW, within the (CB2) General Business Zone. The Pedestrian Commercial Shopping Street Overlay and the Strathcona 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;
  - The Development Officer’s written submission;
  - The Appellant’s written submission; and
  - Additional documentation with photographs, a community consultation, a previous SDAB decision, and a previous Development Officer decision on a proposed development, submitted by the Appellant prior to the hearing.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A community consultation document submitted by the Appellant.

**Preliminary Matters**

[5] The Board made and passed the following motion:

“That SDAB-D-17-169 be raised from the table.”

[6] 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.

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

[8] 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. K. Grey, representing Astral Out Of Home, who was accompanied by Mr. R. Simpson, representing Old Strathcona Law Offices*

[9] Mr. Grey is the Real Estate Manager for Astral Out of Home.

[10] The subject sign is for the Old Strathcona Law Offices (tenant on the subject site) and they would like to renew the existing sign for five years.

[11] The existing sign was approved on June 23, 2012 with no variances. In June 2017, an application to extend the duration of the sign was refused due to a change in the *Edmonton Zoning Bylaw*.

[12] The Development Officer outlined in the refusal that the sign is within the Pedestrian Commercial Shopping Street Overlay (the “Pedestrian Overlay”), which came into effect in 2001.

[13] They referred to photographs of the subject sign as it currently exists along Gateway Boulevard and the four lanes of northbound traffic to demonstrate that there is very little pedestrian traffic along Gateway Boulevard. There are approximately 27,000 vehicles travelling down this portion daily.

[14] There have been no recent changes to this area that will have a significant impact on pedestrian traffic and the sign height.

[15] There are several third party signs along Gateway Boulevard and another sign within 500 metres of the subject sign that is greater than 20 square metres.

- [16] They referenced two digital signs along Gateway Boulevard, one that is 319 metres from the subject site and one that is 84 metres from the subject site and they both exceed the maximum allowable height of 6.0 metres.
- [17] They referenced an aerial photograph to show the locations of other signs in the vicinity.
- [18] With regard to the photograph on page 8 of their submission, the height of the existing sign is consistent with all freestanding signs on adjacent properties. They spoke to a representative from McDonald's Restaurant who indicated they were concerned that if the sign height is reduced it might impact their customers view when leaving the drive-thru lane.
- [19] With regard to the separation distance on page 9 of their submission, the Development Officer outlined that the existing sign does not meet the required 200-metre separation distance. The third party Pattison Outdoor Advertising sign was approved by the Board after the subject sign was approved in 2012. The subject sign met the separation distance at the time of the approval.
- [20] The Development Officer did not provide comments regarding the Pedestrian Overlay.
- [21] With regard to the setback variance, the 0.3-metre deficiency was due to a construction error. The decorative trim portion of the sign that is encroaching into the setback requirement could be removed to comply. However, this will have a negative impact on the aesthetics of the sign.
- [22] With regard to the community consultation requirement, they were not able to contact every property owner in the 60-metre notification radius, but the documentation that was delivered outlined the variances required and stated that the proposed development was for a renewal of the subject sign. They referred to the map in their submission showing the properties that were contacted during community consultation and the feedback from those property owners. The Strathcona Community League provided a letter in support of the proposed development. The community consultation outline form was marked *Exhibit A*.
- [23] In their opinion, this area caters more to vehicular traffic than pedestrians and reducing the sign height will not offer any positive benefits to pedestrians.
- [24] Mr. Grey and Mr. Simpson provided the following with respect to questions from the Board:
- a. They could not confirm if Signs "B", "C", and "D" from the aerial map are within the Pedestrian Overlay. They clarified that those signs were referenced to show that there is consistency in the neighbourhood.

- b. Mr. Grey indicated that he was not part of the original development permit application and could not confirm if the original Applicant was aware of the Pedestrian Overlay.
- c. There have been no complaints during the five years the sign has existed. The five year extension will allow for any changes in the future, such as lanes being reduced, and more sidewalks added, that could be impacted by the sign.
- d. City of Edmonton *Planning Coordination* does not have an objection to the existing sign.
- e. There is a small parking area with two ramps north of the subject site and a parking lot east of Gateway Boulevard with two ramps.
- f. They confirmed that there is limited development on the east side of Gateway Boulevard. It was confirmed that the Pattison Outdoor Advertising sign falls within the Pedestrian Overlay. There are no sidewalks on the east side of Gateway Boulevard.

ii) *Position of the Development Authority:*

[25] The Development Authority provided a written submission and did not attend the hearing.

## Decision

[26] 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 Freestanding Minor Digital On-premises Off-premises Sign permit is approved for a period of up to five years.
2. The proposed Freestanding Minor Digital On-premises Off-premises Sign shall comply in accordance to the approved plans submitted.
3. Minor Digital On-premises Off-premises Signs shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution, in accordance with the following:

- a) Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a)).
  - b) Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada (Reference Section 59.2(5)(b)).
4. The proposed Freestanding Minor Digital On-premises Off-Premises Sign shall comply with the following conditions in consultation with the Transportation Planning, in accordance to Section 59.2(11):
- a) That, should at any time, Transportation Planning and Engineering determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
  - b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
  - c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

**ADVISEMENT:**

1. Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, Transportation Services will require a safety review of the sign prior to responding to the application.

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

1. The maximum allowable Height is 6.0 metres. The proposed Height is 8.0 metres and an excess of 2.0 metres is allowed. (Section 819.3(13)(a)).
2. The maximum allowable Sign Area is 20 square metres. The proposed Sign Area is 31.60 square metres and an excess of 11.60 square metres is allowed. (Schedule 59E.3(5)(c)(ii)).
3. The minimum required separation distance from Digital Signs greater than 8.0 square metres or other Off-premises Sign is 200 metres. The proposed separation distance is 84 metres and a deficiency of 116 metres is allowed. (Schedule 59E.3(5)(d)).
4. The minimum required Setback is 4.5 metres. The proposed Setback is 4.2 metres and a deficiency of 0.30 metres is allowed.

### **Reasons for Decision**

[28] The proposed development, a Freestanding Minor Digital On-premises Off-premises Sign is a Discretionary Use in the (CB2) General Business Zone.

[29] Based on the photographic evidence, the Board finds that there is a variety of Digital and Billboard Signs and of various sizes along both sides of Gateway Boulevard. Therefore, the Board finds that the existing Sign is reasonably compatible in the (CB2) General Business Zone of this area.

[30] The Board grants the variances to the proposed development for the following reasons:

1. The existing Sign has been in this location for five years with no known complaints or concerns.
2. With regard to Community Consultation, the Board accepts the documentation provided by the Appellant and the Board finds that the Community Consultation requirement was met.
3. The vision of the Pedestrian Commercial Shopping Street Overlay (the “Pedestrian Overlay”) is to make the area more pedestrian oriented than vehicular focused. There are many factors that make it difficult to reach the proposed goals of the Pedestrian Overlay. Some include many traffic entrances and exits, large existing parking facilities adjacent to Gateway Boulevard, and four lanes of traffic that have approximately 27,000 vehicles travelling during the day. The current sidewalk on the west side of Gateway Boulevard abuts the four lanes of traffic that is not conducive to a pedestrian-friendly walkway.

4. The Board is concerned that they did not receive any input from Transportation Services. However, with the conditions imposed by the Board, if issues or concerns are brought forward, the City can respond and make changes as required.
  5. The approval for a period of five years provides an opportunity for all parties to review the subject Sign at that time. If more components make the Pedestrian Overlay more conducive to the goals, there would be an opportunity to make changes to the proposed development at that time.
  6. With regard to the separation distance requirement, a previous Board decision granted this specific location notwithstanding that the Pedestrian Overlay was not part of the review of that application.
- [31] The Board notes that no letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [32] The Board further notes that there is support from a neighbouring property owner and the Strathcona Community League.
- [33] Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

**Important Information for the Applicant/Appellant**

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  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
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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.
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