

Edmonton Subdivision and Development Appeal Board

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Date: April 6, 2016
Project Number: 151064015-013
File Number: SDAB-D-16-079

Notice of Decision

[1] On March 22, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 1, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 19, 2016**, to refuse the following development:

To construct an Accessory Building (two storey rear detached Garage, 6.40m x 8.84m), NOT to be used as an additional Dwelling

[2] The subject property is on Plan 2064S Blk 14 Lot 29, located at 11113 - University Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Accessory Building Permit Application;
- Site Plans;
- A registered mail delivery notification;
- The refused development permit;
- The Development Officer's written submissions;
- The Appellant's written submission with attachments;
- An online response in support of the development; and
- The McKernan/Belgravia Station Area Redevelopment Plan.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) Position of the Appellant, Mr. R, Dziubiak

- [6] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [7] He applied for an over-Height Accessory building because he requires sufficient space to work on his art. The additional Height is required because he works with canvasses of different sizes and heights. He also stretches his own linens. The extra Height would give him the opportunity to build larger canvasses and work in a more spacious environment than a traditional Accessory building.
- [8] He has contacted neighbours within the 60-metre notification area and kept records of who has been contacted. All comments he received were positive. Of his adjacent neighbours, the most affected is a lot that has been vacant for a number of years. The owner of that lot has not voiced any opposition to the development and was not present at the hearing. The other adjacent neighbour appeared at the hearing in support of the development.
- [9] The Appellant confirmed that the Accessory building is intended to be used by himself and his family as an over Height Garage. It is not intended to be a Garage Suite. It will not be used as an additional Dwelling. Although there was a Garage Suite approved for the Site in the past, he was not able to build it because his builder underwent insolvency proceedings. He then decided to start the application process for a non-Dwelling Accessory building. Had he applied for a Garage Suite, the plans for the Accessory building would have complied with the Height regulations contained in the *Zoning Bylaw*. It is only because he applied for a non-Dwelling Accessory building that the structure has been deemed too high.
- [10] With respect to the design of the building, he stated that the building was designed with a high roof on one side to conform to the design for the house on the subject Site, which also has a sloped roof. Having consistency in structures on the same property would be more visually appealing and increase the value of the properties in the neighbourhood. The proposed development is also in step with some recent developments in the neighbourhood in which higher roofs were installed.
- [11] He asked the Board to approve the proposed development and grant the required Height variances.

ii) Position of Affected Property Owners in Support of the Appellant

- [12] Mr. T. Bradshaw, the adjacent neighbour to the west of the subject Site, appeared in support of the proposed development. He hopes to build an over-Height structure consistent with the Appellant's structure in the future. The design of both his home and the Appellant's home promote modernization in the neighbourhood.

[13] He also confirmed that there are several multi-storey, multi-suite structures going into the neighbourhood with higher roofs. The proposed Accessory building is in step with these developments.

iii) Position of the Development Officer, Mr. G. Robinson

[14] The Development Officer advised that there was an approved permit for a Garage Suite on the subject Site in 2014. Some variances were granted for that original application. As it is no longer being applied for as a Garage Suite, it does not comply with the Height requirements of the *Zoning Bylaw*.

[15] He also spoke with a Safety Officer who, when the original building permit was issued, advised him that a sprinkler system would be required because of the setback dimensions and the proposed development's proximity to the neighbouring lot. The Development Officer could not confirm that this will remain an issue if the proposed development will not be used as a Dwelling.

[16] He confirmed that, although there is a substantial massing issue regarding the proposed development and its proximity to the neighbouring lot, there are no variances required for any setback associated with the structure.

iii) Rebuttal of the Appellant

[17] In rebuttal, the Appellant stated his belief that, as the structure will not be used as a Garage Suite, it will not require a sprinkler system.

[18] He further stated that the massing effect of the structure would be mitigated by his plans to erect a fence around his property and landscape on both sides of the proposed Accessory building.

Decision

[19] The appeal is ALLOWED and the Decision of the Development Authority is REVOKED. In granting the development, the following variance to the *Zoning Bylaw* is allowed:

- i) The maximum Height of Accessory buildings prescribed by Section 50.3(2) is varied 2.26 metres from 4.3 metres to 6.56 metres. Further, the maximum Height from Grade to the peak of the roof is varied 1.99 metres from 5.8 metres to 7.79 metres.

Reasons for Decision

[20] The proposed development is an Accessory to a Permitted Use in the RF3 Small Scale Infill Development Zone.

- [21] The Board notes that the RF3 Zone permits for other Residential Use Classes that would result in much greater massing and a higher degree of development on the Site.
- [22] The Board accepts the Appellant's contention that the Height of the proposed development would comply with the *Zoning Bylaw* regulations for Garage Suites and notes that a previous application for a Garage Suite on this Site had been approved by the Development Authority with the same exterior design, massing and Height.
- [23] While the Board notes that the proposed development does not fall within the Garage-Suite Use Class as it does not include cooking facilities, the Board accepts the Appellant's contention that the proposed development does permit him to pursue his occupation as an artist on the subject Site.
- [24] The Board notes that the Appellant submitted a community consultation showing significant support in the surrounding community. Within the 60-metre notification area, 14 neighbours indicated support for the development. There were not any letters in opposition presented to the Board, nor did any neighbours appear in opposition at the hearing.
- [25] The Board notes that the design of the proposed accessory building is compatible with the design of the principal residence on the subject Site and with plans the neighbour to the west is proposing for his property.
- [26] Ultimately the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board members:
Ms. K. Cherniawsky
Ms. C. Chiasson
Ms. A. Lund
Mr. A. Nagy

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 5th Floor, 10250 – 101 Street, Edmonton.
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*, R.S.A. 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 5th Floor, 10250 – 101 Street, Edmonton.

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: April 6, 2016
Project Number: 180465544-001
File Number: SDAB-D-16-080

Notice of Decision

[1] On March 22, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 27, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 12, 2016**, to refuse the following development:

To install (1) Freestanding Minor Digital Off-Premises Sign (7.3m x 3.6 m facing E)

[2] The subject property is on Plan 5079HW Blk 20, located at 1 - Westmount Shopping Centre NW, within the CSC Shopping Centre Zone.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A registered mail delivery notification;
- A response from Transportation Services;
- A Sign Combo Permit Application;
- The Development Officer's written submissions;
- The refused development permit;
- Written submissions for counsel for the Appellant; and
- An online response in opposition to the development.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) *Position of the Appellant, Mr. J. Murphy (Counsel)*

- [6] Counsel for the Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [7] He stated that the allowable brightness levels of Digital Signs are limited by Sections 59(5)(a) and (b) of the *Zoning Bylaw*. These provisions respectively limit the light generated by the sign (the luminance) and the illuminating effect produced when the light from the Sign infiltrates surrounding areas (the illuminance). Therefore, for the Development Authority to decide what is too bright goes against the purpose of having these provisions in the *Zoning Bylaw*.
- [8] The Appellant has the same model of Sign located in other locations in Edmonton and has never received a complaint regarding the brightness of these Signs. There is a financial and practical reason for Sign companies to comply with the standards of the *Zoning Bylaw*. It is more cost-efficient to run Signs at a low light level, and the Sign has a lower ambient threshold to overcome in any event.
- [9] With respect to the Development Authority's first reason for refusal, namely that the illumination from the Sign will infiltrate a residential yard 47 metres across the street, counsel for the Appellant disagreed that this would be an issue. There are seven lanes of traffic, a rear alley, a landscaped boulevard, rear-detached Garages and high fences that separate the Sign from the properties across the street. Further, the Sign is oriented towards the East, perpendicular to the street. It is not pointed at the residential area. The Sign cannot infiltrate the yard of the neighbour who is objecting. Given the Sign's location and orientation and the existing ambient light cast from existing Signs, there will be no perceptible difference in light for that yard.
- [10] Counsel made reference to a Sign erected alongside the Terwillegar Recreation Centre to illustrate that Signs with a higher impact on their surrounding area than the proposed development have been approved by the City in the past. The Terwillegar Sign shows full-motion video, has displays on both the front and back of the Sign and is approximately 47 metres away from the back yards of neighbouring residential properties with no landscaping to shield them from exposure to the Sign. In comparison, the proposed development has static copy, has much more separating it from neighbouring residences and only faces one way.
- [11] With respect to the refused size of the Sign, counsel stated that the incremental increase above the maximum Sign area allowed by the *Zoning Bylaw* would not have any impact on the surrounding area. The scale of what is around the Sign renders this minor excess almost unappreciable. The Sign should be evaluated in the context of its surrounding development. In this case, the surrounding development is a large shopping centre. The slight increase in Sign size, given the location and context, will not unduly interfere with the amenities of the neighbourhood or the use, enjoyment or value of neighbouring parcels of land.
- [12] In addressing the third reason for refusal, counsel for the Appellant stated that the scale of the existing buildings and the size of the property on which the proposed development

will be erected justify a variance in the maximum number of on-Site Signs allowed by the *Zoning Bylaw* in the CSC Shopping Centre Zone. The subject Site is 12.22 hectares in size and more than six times the minimum parcel size for which the regulation limiting the number of Signs to four per Site was written. This particular Site has already had two additional Signs approved. Adding one more Sign at this Site will not have any impact on the neighbouring properties or unduly interfere with the amenities of the neighbourhood.

ii) Position of the Development Officer, Mr. S. Ahuja

- [13] The Development Officer stated that the Sign is perpendicular to 111th Avenue. It does not directly face the residential properties across the street. However, there are bedrooms in the back of those homes, and there is no way to stop the light generated by the proposed Sign from illuminating and infiltrating those properties.
- [14] He further stated that the Terwillegar Sign referenced by the Appellant's counsel is not an appropriate precedent. It would be inappropriate to allow similar Signs all over Edmonton based on one Sign that does not appear to comply with the *Zoning Bylaw*.
- [15] The Development Officer did not accept the Appellant's argument about hardship. In his view, a digital component could be added to one of the existing Freestanding Signs, and a new Sign was not necessary.
- [16] The Development Officer referenced a recent application submitted to the Development Authority for a similarly-sized Sign that also resulted in an appeal before the Board. In that case, the Sign was aggressively opposed by affected neighbours. The residence in question was quite far from the proposed Sign, but the Board found that the Sign nonetheless projected light into it. Light does not stop after a certain distance.
- [17] In this case, light will be projected into back bedroom windows located on the second storeys of the nearby homes.
- [18] He further confirmed that the City does not support Signs in close proximity to residential areas, and he did not find any hardship to justify granting the required variances.

iii) Rebuttal of the Appellant

- [19] In rebuttal, counsel for the Appellant stated that he did not raise the Terwillegar Sign as a precedent. He raised it to show that something worse than the proposed development exists and has generated no complaints.
- [20] He also acknowledged that, if complaints are received for the perceived Sign, it may be prudent for the Appellant to change the Use class of the Sign and reconsider its location.
- [21] Finally, he stated that, although the Development Officer is required to consider hardship before granting variances, that same requirement does not apply to the Board.

Decision

[22] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- i) An excess of 6.76 square meters in the maximum Sign area permitted by Section 59E.3(5)(c)(ii).
- ii) An excess of three to the maximum number of Signs allowed on the subject Site Section 59E.3(5)(j) to permit a total of seven Signs on the subject Site.

[23] The development is granted with the following conditions:

- i) The Sign must be erected perpendicular to the South property line of the subject Site.
- ii) Freestanding Minor Digital Off-premises Sign permit is be approved for a period of up to five years. A new application will be required to extend the display duration.
- iii) The proposed Freestanding Minor Digital Off-premises sign shall comply with the approved plans submitted.
- iv) Minor Digital 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:
 - i) 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))
 - ii) 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))
- v) That, should at any time, Transportation Services 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 Services.
- vi) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services 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.
- vii) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

Reasons for Decision

- [24] The proposed development is a Discretionary Use in CSC Shopping Centre Zone.
- [25] The Board acknowledges the Appellant's contention that the coverage in Sign area is related to changing industry standards and that the higher size will allow for a curved, high-resolution Sign.
- [26] Conflicting submissions were presented by both parties with respect to whether light from the Sign would illuminate the residential area south of the proposed development. Counsel for the Appellant referred to an approved Sign in the Terwillegar area presenting worse circumstances than the proposed Sign, but the Board notes that it is not bound by such precedent.
- [27] The Board was not persuaded by the Development Officer's submission that the residential area in question would be adversely affected. The Board acknowledges the communication from the owner of a residential property to the south of the proposed development. However, the Board finds that there was no evidence to support the idea that there would be a material adverse effect regarding illumination projected from the proposed Sign, which will be installed facing the east perpendicular property line and given: the width of 111th avenue; the intervening boulevard and lane; the rear-detached Garages; and, preexisting mature landscaping.
- [28] The Appellant acknowledged that, if complaints about the Sign are received, the location of the Sign may need to be revisited. The Board notes that, by imposing a condition limiting the development to a five-year term, the appropriateness of the location of the Sign will be addressed in the future. In addition, the Board notes that amendments to the *Zoning Bylaw* are being considered to address issues such as maximum Sign area, which may also impact future approvals.
- [29] The Board further accepts the Appellant's contention that the subject Site is extremely large and can well justify the number of Signs which are in excess of the maximum prescribed under 59.E.3(5)(j).
- [30] No one from the surrounding area appeared in opposition to the proposed development.

[31] The Board is satisfied 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 parcels of land.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

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