



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 26, 2016
Project Number: 184896183-001
File Number: SDAB-D-16-117

Notice of Decision

[1] On May 11, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 18, 2016. The appeal concerned the decision of the Development Authority, issued on April 6, 2016, to refuse the following development:

To permit a Freestanding Off-Premises Sign, existing without permits (Outfront Media).

[2] The subject property is on Plan N4000R Blk 178 Lots 16-20, located at 8415 - 109 Street NW, within the CB1 Low Intensity Business Zone. The *Pedestrian Commercial Shopping Street Overlay* and the *109 Street Corridor 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:

- Photos and Google Maps images from the Appellant, received May 11, 2016;
- Copies of the Development Permit Application, Refusal decision, and development plans;
- Copy of the Canada Post receipt confirming delivery of the Development Permit Refusal;
- Development Officer's written submissions, dated May 3, 2016;
- Copy of the Alberta Court of Appeal Decision, *McCauley Community League v Edmonton (City)*, 2012 ABCA 224, provided by the Board Officer; and
- Letter of opposition from the Garneau Community League.

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, RSA 2000, c M-26.

i) Position of the Appellant, Outfront Media

[6] The Appellant was represented by Mr. M. Levine.

Background

[7] Mr. Levine provided a history of the Sign application, beginning with the original permit granted in 1999. He reviewed the conditions in the 1999 permit, and submitted that with the exception of the final condition, the Appellant has complied with each condition.

[8] The final condition stated that the permit was valid for two years, and that the Appellant must apply to extend the duration of the permit when it expired on June 28, 2001. The Appellant failed to apply for an extension, and the subject Sign has been operating for 15 years without a permit.

[9] The Board questioned why the Appellant was now filing for a permit after 15 years of operating without one. Mr. Levine replied that, to the best of his knowledge, recent corporate restructuring resulted in an internal directive to ensure that all Sign developments had valid permits. It was his understanding that the application did not arise from a Bylaw complaint.

Statutory Plan

[10] Mr. Levine disagreed with the Development Officer's written submissions, which stated:

the proposed development for a Freestanding Off-Premises Sign existing without a permit... does not comply with the 109 Street Corridor Area Redevelopment Plan – Bylaw 16242 August 2014. Signage must be of a scale and type that respects the compact, pedestrian-oriented character of the District and related to local businesses.

[11] Mr. Levine observed that the term, "local businesses", is ambiguous. He referred the Board to photographs of the subject Sign. The photos showed the following:

- a. October 2007 Sign face of a political advertisement for Ms. Debbie Yeung, who had run for Edmonton's City Council;
- b. April 2009 Sign face of an educational advertisement for King's University, located approximately four kilometres from the subject property;
- c. September 2014 Sign face for the Edmonton Home Show, which is organized by a local Edmonton company.

[12] Currently, the Sign face is advertising the Butterdome Crafts Show, which is located within walking distance from the sign.

- [13] Mr. Levine submitted that the advertisements exemplify how the signage does relate to local businesses.
- [14] Mr. Levine referred to paragraphs 39 and 40 of the Alberta Court of Appeal's decision in *McCauley Community League v Edmonton (City)*, 2012 ABCA 224 [*McCauley*], wherein the Court noted that the Board recognized that the Edmonton Zoning Bylaw is a regulatory document that takes precedence over an Area Redevelopment Plan ("ARP") where there is a conflict between the two. In *McCauley*, the Court held that the Board did not err in law or jurisdiction in finding that there was no conflict between the Bylaw and the ARP.
- [15] Mr. Levine distinguished the present case from *McCauley*. He submitted that there is a conflict between the Bylaw and the *109 Street Corridor ARP*. The subject development is a Discretionary Use within the CB1 Low Intensity Business Zone, and complies with the Bylaw regulations regarding signs. The *109 Street Corridor ARP*, on the other hand, simply states that Off-Premises Signs are not permitted, with no evidence to support how such signs are not pedestrian-oriented. Mr. Levine submitted that although signs may not contribute to pedestrian-orientation, it does not automatically follow that Off-premises Signs detract from the pedestrian-orientated character of a neighbourhood.
- [16] The Board noted that Section 687(3)(a.1) of the *Municipal Government Act* states, in part, that "In determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans", which includes the *109 Street Corridor ARP*. Section 3.2.3.5 of the *109 Street Corridor ARP* states "Signage must be of a scale and type that respects the compact, pedestrian-oriented character of the District and related to local businesses. Billboards, roof-top, digital and off-premise signage of any type will not be permitted."
- [17] Mr. Levine was cognizant of both the statutory provision and the ARP policy, but in his view, Section 687(3)(a.1) should be interpreted to mean that while the Board must comply with ARP objectives, it need not comply with illogical policies. In this case, the ARP language is illogical, as a pedestrian-oriented district does not necessarily preclude the development of Off-premises Signs within that district.
- [18] In his view, the Off-premises Sign will not affect the average individual walking down the street, who likely will not even notice the sign. In support, Mr. Levine referenced Exhibit "A", a digital video of the owner of a cigar shop located across the street from the subject property. In the video, the owner stated that he did not find that the Off-premises Sign affected the use, value and enjoyment of his property.
- [19] The Board noted that one of the reasons that limitation periods are placed on development permits is to allow for regular reevaluation of the changing character of the neighbourhood in which the development is located. The Board noted that one of the Guiding Principles of the *109 Street Corridor APR* is to "Establish a high standard of design for an important high profile entranceway", which includes the pursuit of

“excellence in architecture, design, building materials, landscaping *and streetscape.*”
[emphasis added]

[20] The Board questioned whether it is due to the changing streetscape of the 109 Street corridor over the past 15 years that the proposed Off-premises Sign is no longer suitable. In reply, Mr. Levine stated that remnants of the old 109 Street corridor remain: the McDonald’s restaurant remains at the same location, as does Page the Cleaner. Although many new businesses have opened, the buildings themselves remain relatively unchanged.

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

[21] Mr. Folkman explained the events which had prompted the current appeal. McDonald’s Restaurant which is located on the same lot as the subject development had previously filed a development permit application for a Digital Sign. As a result of that application, he conducted a search of other Signs within a 100 metre radius, which revealed that the subject development has been existing without a permit for 15 years.

[22] He contacted the Appellant and informed the Sales Representative that the Sign would need to be removed unless the Appellant applied for a new permit. At that stage, he also advised the Appellant that there is a prohibition on Off-Premises Signs under the *109 Street Corridor ARP*. He confirmed that there is nothing on file with respect to complaints about the subject development.

[23] In considering the application under appeal, Mr. Folkman was directed to consider the *109 Street Corridor ARP* as an Overlay, which either supersedes or complements the existing Bylaw. He also considered other factors such as the *Pedestrian Commercial Shopping Street Overlay*, other Off-Premises Signs within a 100 metre radius, and the size of the Sign.

[24] Mr. Folkman confirmed that there are no other Off-Premises Signs within 100 metres of the development. He noted that there are Fascia Off-premises Signs at the south end of the High Level Bridge. These Signs have maintained valid permits and have been grandfathered.

[25] When the Board questioned him about the inconsistency of permitting some signs to be grandfathered, Mr. Folkman referred to Schedules 59E.3(2)(i) and 59F.3(2)(i), which apply to the *Pedestrian Commercial Shopping Street Overlay* and the CB1 Low Intensity Business Zone, respectively. Both provisions state: “An application for the renewal of a Sign with a lawful permit existing at the time of the passage of this Bylaw will not be refused for the sole reason that it does not comply with development regulations of this Bylaw.”

i) *Rebuttal of the Appellant*

[26] The Appellant declined to provide a rebuttal.

Decision

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

Reasons for Decision

[27] The proposed development, a Freestanding Off-premises Sign is a Discretionary Use in the CB1 Low Intensity Business Zone. The *Pedestrian Commercial Shopping Street Overlay* and the *109 Street Corridor Area Redevelopment Plan* also apply to the proposed development.

[28] The Freestanding Off-premises Sign has been in place continuously since 1999 when it was initially approved for a two-year term. The original development permit was never renewed.

[29] In 2016, the Appellant applied for a permit allowing a Freestanding Off-Premises Sign, existing without permits. This application was refused by the Development Officer solely on the basis of a policy in Section 3.2.3.5 of the *109 Street Corridor ARP* which states:

Signage must be of a scale and type that respects the compact, pedestrian-oriented character of the District and related to local businesses. Billboards, roof-top, digital and off-premise signage of any type will not be permitted.

[30] The Development Officer indicated that if an area redevelopment plan is passed by City Council through the enactment of a Bylaw, it is applied as if it were an Overlay. As the *109 Street Corridor ARP* prohibits Freestanding Off-Premises Signs, the development was refused and no further assessment of appropriateness of the proposed Sign was required, notwithstanding that it is a Discretionary Use within the CB1 Low Intensity Business Zone.

[31] The Board does not agree with the Development Authority's policy of applying area redevelopment plans as Overlays, however, the Board recognizes that it is bound by Section 687(3)(a.1) of the *Municipal Government Act*, and must therefore comply with policies and directives of the *109 Street Corridor ARP* in determining this appeal. Compliance in this context, however, does not mean that the Board automatically loses the jurisdiction to exercise discretion in determining the appropriateness of a proposed Discretionary Use or whether a proposed development aligns with the applicable area redevelopment plan.

- [32] The Garneau Community League appears to concur with the Development Officer and to object to the issuance of a permit. The Community League submitted a letter in opposition that erroneously referred to the development as a “Digital Sign”. The Board notes that the list of prohibited Signs includes Digital Signs, Billboards and Off-Premises signage of any type. Therefore, the Board has taken the Community League’s opposition and argument to extend to the proposed Freestanding Off-premises Sign.
- [33] The Community League argued that per Section 687(3)(a.1) of the *Municipal Government Act*, the Board has no jurisdiction to allow this appeal of the refusal to issue a development permit for a Discretionary Use because that type of Use is prohibited under Section 3.2.3.5 of the *109 Street Corridor ARP*.
- [34] The Board disagrees with this proposition. In *McCauley Community League v Edmonton (City)*, 2012 ABCA 224, the Alberta Court of Appeal considered Section 687(3)(a.1) and the relationship between an area redevelopment plan and the general zoning bylaw in particular. The Court referred to the case of *Bridgeland Riverside Community Assn. v. Calgary (City)*, 1982 ABCA 138, where it had concluded that, although the provisions of plans enacted by local governments limit the powers of development appeal boards, they do not eliminate the narrow saving power contained in Section 687(3)(d) (paras 34-37). The Court concluded at paragraphs 39 and 40 that:
- The Board appreciated the Zoning Bylaw is a regulatory document that takes precedence over the ARP if there is a conflict between the two... The Board reasonably interpreted the requirements of the ARP and properly and reasonably exercised its discretion under s. 687(3)(d) of the MGA.
- [35] Based on the *McCauley* decision, the Board concludes that the provisions of an ARP do not oust the discretion of the Board or limit its jurisdiction to consider this appeal. Indeed, the *McCauley* decision clearly contemplates that the Board exercise its discretionary powers when interpreting the requirements of an area redevelopment plan.
- [36] Although the Board disagrees with the position of the Community League and the Development Officer, the provisions of the *109 Street Corridor ARP* remain very germane to the exercise of the Board’s discretion. The Board has therefore taken into account the provisions of the CB1 Low Intensity Business Zone, the *Pedestrian Commercial Shopping Street Overlay* and the *109 Street Corridor ARP* (including the prohibition) in determining whether or not to approve the proposed Discretionary Use.
- [37] While the Board is governed by the principles set out by the Court of Appeal in *McCauley*, in which the development was granted, the Board finds that the circumstances surrounding the case before this Board is distinguishable from *McCauley* in two important respects.
- [38] First, in *McCauley*, the area redevelopment plan prohibited an aspect of the proposed building form (specifically the number of storeys), but did not prohibit the Principal Use

of Apartment Hotel. In this appeal, the specific proposed Use, Freestanding Off-premises Sign, is expressly prohibited under Section 3.2.3.5 of the *109 Street Corridor ARP*.

[39] Second, in *McCauley*, the proposed Discretionary Use was determined to be consistent with the overall context, including the objectives and polices of the applicable area redevelopment plan. In this case, the Board finds that the Sign is inconsistent with the context and aspects of both the *109 Street Corridor ARP* and the *Pedestrian Commercial Shopping Street Overlay*.

[40] The Appellant argued that as the Sign is set well back from the sidewalk, the prohibition should not apply because the Sign does not negatively impede pedestrian traffic. The Board rejects this argument.

[41] Although pedestrian-oriented development is not defined in the *Edmonton Zoning Bylaw*, Section 819.3(10) of the *Pedestrian Commercial Shopping Street Overlay* provides some guidance. This provision states:

All new development and major renovations shall create a pedestrian-friendly environment on the shopping street, which may include such things as entrance features, outdoor sitting areas, canopies, landscaping and other features that lend visual interest and a human scale to development along the street.

[42] It is clear that pedestrian-orientation encompasses more than the notion of unimpeded physical movement or pedestrian safety. Section 819.3(10) indicates that pedestrian-oriented development must consider various architectural and aesthetic features intended to enhance a pedestrian's sensory experience. It is the Board's view that the proposed development does not support this objective. Indeed, the Appellant stated during his oral submissions that the Sign will not affect the average individual walking down the street, as he or she will likely not notice the Sign.

[43] Furthermore, Section 3.2.3.5 of the *109 Street Corridor ARP* refers to signage of a "scale and type that respects the compact, pedestrian-oriented character of the District... Billboards, roof-top, digital and off-premise signage of any type will not be permitted." This prohibition extends to roof top signs which obviously do not impede pedestrian movements along the sidewalk and further supports a broader interpretation of pedestrian-orientation. In addition, this specific prohibition relates to the overall objectives and vision under Section 2.1 of the *109 Street Corridor ARP*, which states, in part:

[The area] will evolve to an attractive and vibrant main street gathering place with a balance of commercial and residential uses and mixed used developments. 109 Street will support the transportation needs of adjacent communities, other Edmontonians and visitors while enhancing the viability of and connections between adjacent neighbourhoods.

- [44] Not only is the subject development inconsistent with this vision, it also does not accord with many of the Guiding Principles for the area as set out in Section 2.2 of the *109 Street Corridor ARP*. One of these Guiding Principles state:

Pursue excellence in architecture, design, building materials, landscaping and streetscape. The Corridor is a major entry point into the City's downtown from the south and has a significant visual impact on its users. The appearance of the buildings and the public and private realm streetscape has an important influence on how it is perceived by both commuters and local residents.

- [45] The Board recognizes that this Sign has been in place without either a complaint or a valid permit for over 15 years. However, while a large billboard type Freestanding Off-premises Sign may have been appropriate when initially approved in 1999, the situation along the 109 Street Corridor has changed significantly over the past 15 years. The surroundings continue to evolve with the introduction of the *109 Street Corridor ARP* in 2014.

- [46] Although the Board's discretionary power is not ousted by the prohibition regarding billboards and off-premises signage contained in the *109 Street Corridor ARP*, the Board finds the overall objectives and vision of the area redevelopment plan to be compelling. The Board is of the opinion that this Freestanding Off-premises Sign is no longer appropriate or reasonably compatible with the surroundings at this location. Accordingly, the appeal is denied.

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

Board Members in Attendance

Ms. K. Cherniawsky, Mr. M. Young, Ms. P. Jones, Ms. K. Thind

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. 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.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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: May 26, 2016
Project Number: 188595235-001
File Number: SDAB-D-16-118

Notice of Decision

- [1] On May 11, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 19, 2016. The appeal concerned the decision of the Development Authority, issued on April 14, 2016, to refuse the following development:

To construct a Semi-detached House with front verandas, covered decks (1.524m x 1.524m) and Basement Developments (NOT to be used as additional Dwellings)

- [2] The subject property is on Plan 2256AD Blk 48 Lot 24, located at 11730 - 91 Street NW, within the RF3 Small Scale Infill Development Zone. The *Mature Neighbourhood Overlay* applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Copies of the Development Permit Application, Refusal decision, and plans;
 - Development Officer's written submissions, dated May 11, 2016; and
 - Email in opposition to the development from an affected neighbour, with a follow-up retraction email.

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, RSA 2000, c M-26.

i) *Position of the Appellant, Skyview Home Ltd.*

- [6] The Appellant was represented by Ms. R. Deane.
- [7] Ms. Deane conducted a form of community consultation the previous night. As a result of that consultation, the neighbour directly adjacent to the north of the subject property who previously sent a letter of opposition has now signed a petition in support of the development. The petition (Exhibit "A") contains signatures of support from approximately 50% of the neighbouring property owners. Ms. Deane had been unable to reach all the residents within the notification area.
- [8] During the community consultation, Ms. Deane explained why the development had been denied as many neighbours did not understand the notice letter from the City. She also reviewed the development blueprints and plot plans with the neighbours.
- [9] Ms. Deane submitted Exhibit "B", four photos showing three Semi-Detached developments built in mature neighbourhoods. When questioned by the Board, Ms. Deane confirmed that two of the four photographs were of developments outside the 60 metre notification area, and that the proposed development will be the first Semi-Detached House located on the blockface. The third photographed property was a side-by-side Semi-Detached development with a rear detached Garage located across the lane from the subject Site on a significantly larger lot.
- [10] The proposed development will have a parking pad in place of a rear detached Garage.
- [11] The Board noted that the submitted application and plans show a rear detached Garage, and that if the plan is for a parking pad involving different dimensions which might impact the proposed Private Outdoor Amenity Area, then the Appellant should make a new application. Ms. Deane clarified that she would like the Board to consider the application for a Semi-Detached House with a rear detached Garage as submitted to the Development Officer. She explained that the parking pad had been considered as an alternative to provide additional Private Outdoor Amenity Area. However, she acknowledged that even with a parking pad, the Amenity Area would still be deficient.
- [12] With respect to the deficiency in Site Area and Site Coverage, Ms. Deane stated that the proposed development is similar in size to others in the area. It was her belief that the other Semi-Detached Houses in the area are also deficient in Site Coverage, though she did not submit any evidence on this point. In her view, the excess in maximum Site Coverage of 1.7% is a minimal deficiency.

ii) Position of the Development Officer, Ms. K. Heimdahl

- [13] Ms. Heimdahl confirmed that with the exception of the building on the adjacent lot to the rear, which has been approved as Stacked Row Housing, there are no other Semi-Detached houses in the area.
- [14] Regarding the alternative plan to build a parking pad instead of a detached Garage, she noted that the Amenity Area must still be landscaped, and would therefore not be considered as a parking space.
- [15] She acknowledged that the overall square footage of the Amenity Area is sufficient, but the actual linear dimensions are deficient by approximately two and one-half feet in depth.
- [16] At this point, the Board observed that her written submissions did not include recommended conditions for the Board's consideration. At Ms. Heimdahl's request, and with the agreement of the Appellant, the Board adjourned the hearing so that Ms. Heimdahl could return to her office and prepare a list of recommended conditions.
- [17] During the adjournment, Ms. Deane communicated with administrative staff that she was unable to stay for the remainder of the hearing. She stated that she was fine with the Board proceeding without her, she was aware proposed conditions would be considered and she had no further submissions to make.
- [18] The Development Officer presented a list of proposed conditions marked Exhibit "C" which she described as standard. The Board noted that if it were to allow the appeal and grant the variance to the Amenity Area requirement, then the seventh proposed condition would no longer apply. Ms. Heimdahl agreed.
- [19] Ms. Heimdahl also confirmed that each Dwelling in a Semi-Detached development is supposed to have their own Amenity Areas. However, allowances can be made to permit two Dwellings to share an Amenity Area.

Decision

- [20] 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 CONDITIONS proposed during the hearing by the Development Authority, marked Exhibit "C" and attached, with the exception of the seventh Condition which is no longer applicable.
- [21] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. Section 140.4(3)(a) is varied to permit a deficiency of 74.56 m² for a total Site Area of 367.641 m².
2. Section 140.4(10)(d) is varied to permit an excess of 1.7% in the maximum Site Coverage for a total Site Coverage of 29.7% or 109.1 m².
3. Section 47(5) is varied to permit a deficiency of 0.84 m in the depth of the Private Outdoor Amenity Area, for a total depth of 3.16 m.

Reasons for Decision

- [22] Semi-Detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone. The *Mature Neighbourhood Overlay* also applies to the subject property and the proposed development complies with all the development regulations contained within that Overlay.
- [23] While none of the variances to the development regulations required community consultation, the Appellant visited each property along the block face and was able to obtain seven signatures in support of the development after showing the owners the proposed plans and outlining the deficiencies.
- [24] The Board notes that the neighbour immediately to the north of the development who had previously submitted a letter of opposition subsequently provided a signature in support of the development. In addition, the same neighbour submitted a follow up email dated May 11, 2016, stating that the concerns outlined in her opposition letter had been resolved. No other objections were received and no one appeared to oppose the development. According to the Appellant, the neighbour immediately to the south reportedly objected on the basis of construction related noise. This objection is not related to the proposed variances.
- [25] While the Board recognizes that the variance to Site Area is significant, it also notes that the additional variances to the maximum Site Coverage and Private Outdoor Amenity Area are *de minimis*. Further, no variances are required to any setbacks, parking requirements, or other development regulations. As such, despite the deficiency, the Board finds that the proposed development is not an overbuild for the subject Site that would have a material negative impact on the use and enjoyment of neighbouring parcels of land.
- [26] While a variance to the depth of the Private Outdoor Amenity Area is required, the total square footage of this Private Outdoor Amenity Area complies with the development regulations.
- [27] The development is situated on a lot that is similar in dimensions to other nearby lots and is typical of this area. Despite the prevalence of smaller lots, the area is zoned RF3 Small Scale Infill Development Zone, which lists Semi-Detached Housing as a Permitted Use.

- [28] The Executive Summary of *The Way We Grow*, the City of Edmonton's municipal development plan and a statutory plan as defined by the *Municipal Government Act*, states in part, that "The Plan encourages... a wider range of housing... [and] supports development of a wide range of housing types to accommodate the changing needs of Edmontonians." The proposed development is consistent with this objective.
- [29] The proposed development is also consistent with Policy 3.5.1.1 of *The Way We Grow* which supports "redevelopment and residential infill that contribute to the livability and adaptability of established neighbourhoods."
- [30] For the reasons above the Board concludes that the proposed development is consistent with applicable statutory plans and 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. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. K. Cherniawsky, Mr. M. Young, Ms. P. Jones, Ms. E. Solez, Ms. K. Thind

Enclosure

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: May 26, 2016
Project Number: 177067302-002
File Number: SDAB-D-16-119

Notice of Decision

- [1] On May 11, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 19, 2016. The appeal concerned the decision of the Development Authority, issued on March 29, 2016, to approve the following development:

To construct 26 Dwellings of Apartment Housing (1 building, 4 storeys)

- [2] The subject property is on Plan 1525639 Blk 2 Lot 22, located at 12804 - 66 Street NW, within the RA8 Medium Rise Apartment Zone. The *Medium Density Residential Overlay* and *Belvedere 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:

- Respondent-Applicant's parking photos;
- Copies of the Development Permit Application, Approval decision, and plans, including a revised parking plan;
- Copies of various City of Edmonton Memoranda, including comments from Drainage, Waste Management, Fire Rescue Services and Transportation;
- Development Officer's written submissions, dated May 4, 2016; and
- One email in opposition to the development.

Summary of Hearing

- [4] Ms. Solez disclosed that two years ago, she had been on a Homeward Trust Committee for about one year. She did not believe that her previous role with the Committee would impact her ability to provide an impartial judgment.

- [5] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel. No objections were noted.

- [6] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, RSA 2000, c M-26.
- [7] The Presiding Officer confirmed that Apartment Housing is a Permitted Use in the RA8 Medium Rise Apartment Zone, and that the only variance required was to the vehicular parking requirement under Schedule 1 of Section 54.2 of the *Edmonton Zoning Bylaw*. Therefore, any issues or concerns arising from the granting of the parking variance and any alleged errors in the interpretation of the *Edmonton Zoning Bylaw* were most relevant.

i) Position of the Appellant, Ms. K. Berg

- [8] Ms. Berg submitted that various factors contribute to on-street parking stresses, therefore, she does not support the parking variance granted for the proposed development. These factors can be broken down as follows:
- a. Poor drainage along an adjacent street impacts the available on-street parking near the subject Site;
 - b. Lack of on-site staff parking for the proposed development;
 - c. Car dealership on the corner of 66 Street and 128 Avenue;
 - d. Lack of security for residents with off-street parking capabilities; and
 - e. Lack of reasonably accessible public transit modes.

Poor Drainage

- [9] In 2012, the area surrounding the subject Site experienced major flooding as the sewer system and storm drainage system were overwhelmed. The flooding caused significant damage.
- [10] The intersection of 67 Street and 128 Avenue also experiences regular drainage issues. During heavy rains, the entire intersection floods with approximately one foot of water. Parking along flooded streets is limited, which impacts available on-street parking of surrounding areas, including 66 Street where the proposed development will be located.

Lack of On-Site Staff Parking

- [11] Referring to the written submissions of the Respondent, Ms. Berg noted that the five other developments submitted by Homeward Trust as comparators are located on the opposite side of Yellowhead Trail. These comparators are located closer to the downtown core, with different types of residents and transportation modes.
- [12] The Respondent's application states that there will be full-time staff employed at the proposed development, but makes no mention of on-site staff parking. As such, it is

likely that the proposed four visitor parking spaces will be utilized by staff. Visitors to the Site will therefore have to park on-street, which will further impact the existing parking strains.

Car Dealership

- [13] Referring to photographs of the on-street parking strains in the surrounding area (Exhibit “A”), Ms. Berg noted a disparity between her photos and those submitted by the Respondent.
- [14] Ms. Berg explained that her photographs were taken on April 16, 2016 at 3:55 p.m. The photos show the car dealership located on the corner of 128 Avenue, which does not have off-street parking spaces for customers so the dealership’s customers use on-street parking spaces.
- [15] The dealership also regularly parks multiple vehicles in front of the property along 128 Avenue. In the past few months, Ms. Berg observed a significant increase in the dealership’s utilization of on-street parking.

Security

- [16] Ms. Berg explained that although newer infill homes include Garages, most existing homes have rear parking pads.
- [17] The western portion of 66 Street is currently a large green space which is occupied by homeless individuals. This green space is across the rear lane from residential properties along 67 Street. There is also poor lighting along this area. This situation creates security concerns and residents along this block face do not park their cars on their rear parking pads as they park on-street instead. This adds to the existing residential on-street parking pressures in the immediate area.
- [18] When questioned by the Board, Ms. Berg acknowledged that the new building would have better lighting and security features, which may alleviate some of the residents’ concerns about parking on their on-site parking pads. However, she stated that the lighting and security features do not diminish the fact that only one on-site parking space is available on most lots in the area. Her own building permits only one on-site parking stall per unit, however more than one vehicle is associated with each unit.

Public Transit

- [19] A main bus route runs along 129 Avenue and various bus stops are located along 66 Street. It is also possible to walk to the nearby LRT station.

- [20] However, the LRT station is located several blocks from the subject development. The distance is approximately 498 metres, which exceeds the 400 metres guideline under the City of Edmonton's Transit Oriented Development. This distance presents significant difficulties for individuals with mobility issues.
- [21] Ms. Berg was not aware of any restrictive parking or seasonal parking bans near the proposed development.
- [22] The difficulties accessing public transit cause most residents to rely upon private vehicles and utilize on-street parking. Many homes have more than one vehicle. The property located at 128 Avenue and 67 Street, directly across from her home, owns three vehicles.

ii) Position of Affected Property Owner in Support of the Appellant, Ms. L. Zhao

- [23] Ms. Zhao reiterated the Appellant's concerns with respect to the lack of designated reserved parking stalls for staff. Since staff may have to use the visitor stalls, actual visitors such as friends and family of the tenants will have to park on-street. In her view, 18 stalls will provide insufficient parking for residents of 26 units, attending staff and visitors to the development.
- [24] Ms. Zhao submitted various photographs demonstrating the existing on-street parking stresses. The photographs show two vehicles blocking the rear laneway of the proposed development. Ms. Zhao explained that one of the properties located along 128 Avenue and 67 Street provides disability transportation services through Edmonton Transit Service twice a week, which results in blockages and additional rear lane traffic.
- [25] Other pictures showed the on-street parking situation along 67 Street on different days. Due to the nearby school and churches, special events result in greater difficulty locating on-street parking spaces. When questioned by the Board, Ms. Zhao was unclear if the pictures demonstrate Sunday activities, but she reiterated that the photographs reflect the current on-street parking stresses.
- [26] Other than two reserved handicapped parking spaces along 67 Street, there is no reserved parking for neighbourhood residents.
- [27] The area also experiences intense construction activity due to redevelopment, road-widening and intersection improvements. Notwithstanding Transportation Services' support of the parking variances, Ms. Zhao urged the Board to consider future growth when evaluating the merits of a parking variance because once the development is approved, there is no further space to provide additional parking to address future increased demands.

iii) *Position of the Development Officer, Mr. K. Bacon*

- [28] After providing a brief overview of the proposed development, Mr. Bacon explained that although he did not receive a proposal for staff parking, he was provided with comparators of similar low-income oriented developments which did not fully utilize the available on-site parking.
- [29] When questioned by the Board about the comparable developments, Mr. Bacon confirmed that the comparators were of similar low-income oriented housing that experienced similar under-utilization of on-site parking spaces. He did not consider this development a typical Apartment Housing Use. In his view, given the likely resident profile, the usual parking requirements would not be necessary
- [30] The Board noted that notwithstanding the low-income focused nature of the development, a development permit runs with the land, such that the parking variance could become inadequate for a future non-low income oriented development. Mr. Bacon acknowledged that the *Edmonton Zoning Bylaw* does not mandate that approved low-income Apartment Housing must remain restricted to low-income oriented developments.
- [31] Mr. Bacon explained that even if the property owner or user were to change, any future development would be limited to affordable housing in some form by virtue of the size of the units, which are smaller than typical Apartment Housing units. All units are one bedroom layouts of approximately 400 to 500 square feet. The physical layout of the units would also limit the number of occupants.
- The Site configuration also prevents the possibility of a large number of on-site staff, as there is only one office space on the main floor. In addition, it was his view that the supportive functions provided by on-site staff are Accessory to the Principal Use, which is to provide 26 Dwellings in a low-income oriented Apartment House, therefore, do not impact the on-site parking requirements.
- [32] Regarding the possibility of reconfiguring the Site plans to provide additional off-street parking, Mr. Bacon explained that it would be possible to provide underground parking or to add another level of above ground parking. The latter option would further impact the subject development because it currently proposes two Dwellings on the main floor.
- [33] Mr. Bacon confirmed that the distance to the Belvedere LRT Station is 482 metres, and that if the Site were within the 400 metres guideline under Transit Oriented Development, the parking requirement would in fact be reduced to 25 off-street parking spaces.

iv) Position of the Respondent, Homeward Trust

- [34] The Respondent was represented by Ms. S. McGee and Mr. A. Gable.
- [35] The proposed development is one of 80 Homeward Trust projects created to house 5,000 City residents and help implement the City of Edmonton's 10 Year Plan to End Homelessness. The City of Edmonton's Housing Strategy also seeks to increase the supply of affordable housing and options for transition from homelessness, working toward 25% of such developments in mature neighbourhoods. The proposed development is one of several proposed to fulfill this mandate.
- [36] There are 18 off-street parking spaces, four of which have been designated for visitor parking. The submitted parking study covers observation periods from 6:00 a.m. to 10:00 a.m., 10:00 a.m. to 2:00 p.m., and 2:00 p.m. to 6:00 p.m., on Tuesday, Friday and the weekend. The results of the study demonstrated that on-site parking at each of the comparator Sites was never fully utilized. Some on-site parking has been so underutilized that parking space has been repurposed for basketball and accessory storage.
- [37] When questioned about the specific properties used as comparators, Ms. McGee explained that the comparator properties south of the Yellowhead are similar to the proposed development in that they are located in areas that also experience on street parking pressures; in those instances, the parking pressures are related to their proximity to downtown. All results demonstrated underutilized parking, with approximately 10% to 25% of clients using the on-site parking spaces. Each comparable Site has differing parking policies, but for the most part, if a tenant owns a vehicle and wishes to utilize the off-street parking space, an additional fee is charged. Very few clients require or use this service, and she is unaware of any tenants at the comparable properties utilizing on-street parking to avoid this fee. Typical tenants do not have the means to own or operate personal vehicles. The small size of the dwellings practically limits the numbers of visitors and the need for visitor parking.
- [38] The Appellant's concerns relate to other developments such as the car dealership which are out of the Respondent's control. They provided photos which showed lower levels of on-street parking and suggested the differences are related to business hours of the car dealership. Parking appears to be more congested on the weekends.
- [39] Ms. McGee also clarified that the area available for parking spaces was determined based on several factors, such as the building's orientation onto the street, architectural design choices, the requirement under the *Medium Density Residential Overlay* that Dwelling units be provided on the ground floor, and the prohibitive cost of underground parking. Based on these factors, the number of proposed parking spaces maximizes what is possible on the Site, but Ms. McGee emphasized that in her view, the 18 proposed off-street parking spaces will actually exceed the on-site parking that will be required.
- [40] City funding was provided for this project with the intent that the development be made available only for low-income housing.

- [41] With respect to on-site staffing, Ms. McGee explained that the comparator developments had nine full-time staff, two of which were on-site at any one time. No parking issues arose from this arrangement, and the proposed development will be similarly staffed.
- [42] The proposed development also provides increased lighting and visual monitoring of the Site, which may increase the confidence of residents to utilize their own on-site parking spaces and reduce overall demand for on-street parking.
- [43] Ms. McGee emphasized that the City of Edmonton's Drainage department, as well as Epcor, assessed the drainage situation. She explained that the development will be connected to the sewage system, and that capacity within the system has already been identified for the development.
- [44] The proposed development was also presented to a meeting of the Community League Board, and received considerable support. The Community league did identify one low-income housing operator several blocks west of the subject Site, but no concerns were raised and Ms. McGee was unaware of any other large operators such as Capital City Housing in the area.

v) *Rebuttal of the Appellant*

- [45] Ms. Berg emphasized that laudable though the goals and vision of the development are, the issue is the effect of the parking variance upon existing on-street parking stresses.
- [46] She noted that the parking surveys do not take into account snow piles during the winter, which further limits the available on-street parking.
- [47] With respect to other low-income housing provided in the area, Ms. Berg stated that high-density low income housing occupies the entire block face on 67 Street spanning from 128 to 129 Avenue.

Decision

- [48] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Development is GRANTED as applied for to the Development Authority, subject to the CONDITIONS and advisements as set out in the approved permit.
- [49] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
- 1) Schedule 1(A)(1) to Section 54.2 is varied to permit a deficiency of 12 parking spaces for a total of 18 parking spaces instead of the required 30.

Reasons for Decision

- [50] Apartment Housing is a Permitted Use in the RA8 Medium Rise Apartment Zone and, but for the parking variance, the Applicant would be able to obtain a development permit as of right under Section 685(3) of the *Municipal Government Act*.
- [51] The Board notes the concerns about existing parking pressures in the immediate area raised by the Appellant and the affected neighbour who appeared in opposition to the development. Based on photographic evidence provided by all parties, the Board finds that parking availability varies at different times and days of the week. The Board accepts that the parking pressures are mainly related to nearby churches, a school and a used car dealership. These pressures appear to be most extreme on the weekends.
- [52] The Board finds that the proposed variance will not materially add to the existing parking pressures in the neighbourhood and may even alleviate some of the parking pressures by adding security in the rear lane adjacent to the development.
- [53] The Board also accepts the reasoning of the Development Officer as provided at page 4 of his written submissions and his conclusion that “the amount of onsite vehicular parking stalls is sufficient to accommodate the proposed Apartment House building based on the... comments of the Transportation Planning and Engineering [Department].”
- [54] In particular, the Board accepts that the parking demand study of five similar housing projects are indeed comparable to the proposed development, and demonstrate that the ratio of on-site parking to Dwelling units will be more than sufficient for the proposed development.
- [55] The Board also accepts the Respondent’s submission that given the modest size of each of the proposed 26 Dwelling units, it is unlikely that the demand for resident and visitor parking will change regardless of the ownership of the building. The Board finds that the parking needs associated with the proposed development will be significantly lower than the standard generally applicable requirements for Apartment Housing. The Board finds that the demand for parking is likely to remain relatively low, given the design of the building and its Dwelling units.
- [56] Further, although outside the threshold range for the application of the Transit Oriented Development regulations, the Development Officer and the Appellant confirmed that the proposed development is within walking distance to the Stadium LRT Station. In addition, there is existing transit service along both 66 Street and 129 Avenue.
- [57] There are no parking restrictions in the immediate vicinity.
- [58] The Respondent indicated that there will be two staff on-Site at any given time, and the Board concurs with the Development Officer’s conclusion that such Use is Accessory to the Principal Use (the provision of 26 Dwelling units within a low-income oriented Apartment Housing). As such, the Board finds that the presence of two staff members

will not materially impact the demand for parking or the availability of on-street parking within the immediate area.

[59] The proposed development was presented to a meeting of the Community League Board where it received considerable support.

[60] For the above reasons, the Board finds that the 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. As such, the appeal is allowed and the development is granted.

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

Board Members in Attendance

Ms. K. Cherniawsky, Mr. M. Young, Ms. P. Jones, Ms. E. Solez, Ms. K. Thind

c.c. Ms. K. Berg
Ms. L. Zhao
Ms. S. McGee
Mr. A. Gable
City of Edmonton, Sustainable Development Department, Attn: Mr. K. Bacon

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.