



**SUBDIVISION AND DEVELOPMENT
APPEAL BOARD**

DATE: Wednesday, July 31, 2019

TIME: 6:00 p.m.

PLACE: Council Chambers

FILE: B02

AGENDA

1. Adoption of Agenda

2. Radius Notifications

3. Appeals

a) 23 Beaverbrook Crescent

The Appellant is appealing the decision of the Development Officer in refusing a Development Permit Application to leave an accessory building (shed) in the side yard and a deck in the rear yard as built.

b) 590 St. Albert Trail

The Appellant is appealing the decision of the Development Officer in refusing a development permit application for a billboard sign with digital display.

4. Adjournment

ALLOWED WITH CONDITIONS

CITY OF ST. ALBERT

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION SDAB# 17-2019

Re: Lot 25, Block 17, Plan 4448TR - known municipally as 23 Beaverbrook Crescent, St. Albert, AB.

Regarding the appeal of a decision of the Development Officer in refusing a development permit application to leave a deck in the rear yard as built and a shed in the side yard as built.

The Appellant had no objection to the members of this Board hearing and deciding this Appeal.

The Hearing of this matter was originally scheduled for July 17, 2019 and no members recused themselves at the Hearing. However, when the Hearing continued on July 31, 2019 (at the request of the Board), Wyatt Glebe did not take part in Hearing, deliberations or decision in this matter.

The Board considered the Development Officer's written report and heard from the Development Officer who stated that:

The Appellant is appealing the decision of the Development Officer, in refusing a Development Permit application to leave a deck in the rear yard as built, and a shed in the side yard as-built. This property is located within a low-density residential (R1) District. Within the R1 district, accessory developments including sheds and decks are permitted uses.

The permit was refused as the variances required to allow the structures to remain as built exceed the variance capacity of the Development Officer to grant.

As set out in Section 8.9(1)(c), the minimum rear yard setback for a deck is 3.0m. As proposed, the deck will be located 0.97m from the rear property line. The variance required is 2.03m (67.7%), which exceeds the variance capacity of the Development Officer to grant pursuant to Section 3.14(3).

The Development Branch did not foresee any potential hazards or risks by allowing the location of the deck as proposed. The potential conditions of a development permit can be practically implemented and effectively measured. It was also noted that the execution of an Encroachment Agreement to allow a rear deck within the 2.44m Utility Right-of-way (Plan 4449TR) was pending the decision of the SDAB.

With respect to the shed in the side yard, Section 8.2(c) indicates that an accessory building (shed) must be located at least 1.2m from a side property line and 1.5m from

the principal building. The variance required is 1.2m from the side yard and 1.5m from the principal building (100%), which exceeds the variance capacity of the Development Officer to grant pursuant to Section 3.14(3).

It was noted that the shed encroached 0.10m onto adjacent Lot 24. The City cannot allow the authorization of a building to remain on a separate private property (Lot 24), therefore, the City only was speaking to the portion located on the subject property.

The Board heard from the Appellant who stated that:

The Appellant indicated that both the deck and side shed have been in place for decades. She submitted that they both enhanced the enjoyment and utility of their own yard, but did not impede the enjoyment or use of their neighbours using their yards. They had never received any complaints from their neighbours.

With respect to the deck, it is low-lying and is essentially ground cover in most places, with the level of the deck following the slop of the yard.

Regarding the shed, it does not encumber access to the yard because it allows for "walk-through" access to the back yard. The Appellant pointed out that the shed cannot be seen from the street or back due to tree cover and the position of the home.

The Appellant submitted that the RPR did not accurately reflect the location of the shed. She provided pictures that showed the front of the shed being at a distance of 26 inches from the fence at the front of the shed and 5 ½ inches from the fence at the back of the shed. The RPR however indicated that the shed was encroaching 0.10m onto the adjacent lot (Lot 24). The Appellant explained that she had been in discussions with the surveyor about the discrepancy and that there might be some resolution in that regard.

The Board also considered/reviewed the following

The Board had some concerns with the Appellant's submissions in relating to the side shed and her comments that the survey which indicated the shed was encroaching on Lot 24 was inaccurate. The Board sought clarification from the Appellant about the survey and adjourned the hearing for 2 weeks to allow the Appellant to seek clarification from the surveyor about the inaccuracy of the survey.

When the matter came back before the Board, the Appellant provided two additional pieces of information. The first was a letter of support from the owner of Lot 25, indicating support to the leave the shed built on Lot 25, but the letter was not an encroachment agreement.

Second, the Appellant made submissions and provided an email from the surveyor indicating that with respect to older properties, it is sometimes difficult to find survey evidence of the boundaries as they change. However, the accuracy or errors that may come into play are in the area of 1 to 2cm.

The Board finds the following:

Allowed with conditions:

The Subdivision and Development Appeal Board of the City of St. Albert hereby grants the Appeal leave a deck in the rear yard as built and a shed in the side yard as built.


The development is approved with the following conditions:

1. Approval is for a rear attached deck and shed to leave as built in accordance with the sit plan, Permitted uses under the provisions of Section 8.9 and 8.2 of Land Use Bylaw 9/2005.
2. Any proposed changes in design, elevation or site plan configuration shall first be submitted for review by the Development Officer and any such changes shall not be undertaken until written authorization is provided by the Development Officer.
3. Future deck development shall be subject to a separate development permit application.
4. The deck, as approved, shall remain uncovered and unenclosed.
5. The exterior finishes of the shed shall match or complement the exterior finishes of the existing dwelling.
6. With respect to the shed, the variance is approved up to the property line, and not the portion that encroaches on Lot 24. There is a requirement that an encroachment agreement be entered into between the owners of Lot 25 and Lot 24 to allow that portion of the shed that encroaches on Lot 24 to remain in place. The encroachment agreement is to be registered on title to both properties and the registration is to take place within 1 year from the date of this decision.

The Board makes its decision for the following reasons:

1. The Board concludes that (in accordance with section 687(3)(d) of the *Municipal Government Act*) the variances will not unduly interfere with the amenities of the neighbourhood, and/or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land based on the following because:
 - a. The most affected neighbour was consulted and advised he has no issue with the variance; and
 - b. There were no objections from any of the other neighbours.

The Applicant is responsible for complying with all applicable federal, provincial and municipal enactment and any other applicable law and for obtaining all applicable permits, licenses and approvals. Building permits must be obtained from the Building Inspector who can be contacted at 780-459-1655.

Chair  Date AUGUST 13/2019

ALLOWED WITH CONDITIONS

CITY OF ST. ALBERT

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION SDAB# 14 -
2019

Re: Lot IOA, Block 30, Plan 8820333- known municipally as 590 St. Albert Trail, St. Albert, AB.

Regarding the appeal of a decision of the Development Officer in refusing a development permit application for a billboard sign with a digital display.

The Appellant had no objection to the members of this Board hearing and deciding this Appeal.

At the commencement of the Hearing, none of the Board members had to be recused because of a conflict. This matter had been adjourned from July 3rd, 2019 at the request of the City. At that hearing Wyatt Glebe was not present. He did take part in the Hearing, deliberations and decision as there was no evidence heard on July 3rd, 2019 and the Appellant did not object to him sitting on the Board to hear the appeal.

The Board considered the Development Officer's written report and heard from the Development Officer who stated that:

The appellant is appealing the decision of the Development Officer in refusing a development permit application to allow Digital Display of an existing billboard sign.

The proposed location of the sign is within the Corridor Commercial (CC) District. Within this land use district, a Billboard with a Digital Display is identified as a discretionary use.

The existing V-shaped billboard sign is located alongside the St. Albert Trail, within the Corridor Commercial (CC) Land Use District. At the time of the original application in 2016, the Land Use Bylaw (LUB) allowed for a billboard size sign with an electronic message component as a discretionary use, which was applied for and approved by the SDAB with conditions. Since that time the LUB has been amended to allow for a billboard sign type with a digital display as a discretionary use, thereby removing the electronic message component option.

The Development Officer went through a chronological review of the various appeals, applications and LUB amendments that have occurred since the original approval by the SDAB that was referenced.

The Development Officer reviewed the provision of the LUB that applies to Digital Displays. She indicated that the reasons that the development permit application was refused included that:

- The two-sided digital display was in a V-shaped configuration and not parallel with each other as set out in the LUB.
- The Billboard was to be located a minimum of 150m from a freestanding sign with a digital display facing the same oncoming traffic. The nearest such sign was located 73.88m from this sign.
- The setback requirement from a PS district to the west was a minimum of 100m and this setback required a variance of 34.84m to the PS district.

The proposed sign location exceeded the minimum setback from the intersection with Giroux Road/Boudreau Road, at 81.81m, and the required setback was 30.5m.

The City Transportation Branch also made submissions to the SDAB. The City Transportation engineer provided comparative accident statistics for various intersections in St. Albert. The subject intersection was amongst the highest in St. Albert from 2012 to 2017, when compared to other intersections in St. Albert.

Statistics for this intersection only were part of the presentation and they showed an increase in accidents from 2017 to 2018. The subject sign started operating in September 2018. The City Transportation department did not support the application for the Digital Display at this location as it was their position that the operation of the sign at this location would have an impact on driver and pedestrian safety.

The Board heard from the Appellant who stated that:

The Appellants counsel, Mr. Noce, made submissions to the Board along with a traffic expert from Bunt & Associates.

Counsel made submissions that the original approval was for a text only sign, and the LUB was changed days after the SDAB's original decision in 2016 to allow for the existing sign, with text only. He also referred to the variance powers of the Development Officer and various cases from the Court of Appeal that he suggested were relevant to this matter.

Next, counsel addressed the various basis on which the Development Officer rejected the application. He submitted that the Bylaw did not necessarily disallow the V-shaped configuration of the existing sign, as the language did not expressly reference such a configuration. He referenced the doctrine of implied exclusion.

In terms of the setback from any other digital displays, counsel submitted that this sign was there first, but that the variance in any event should be allowed. Regarding the setback from the PS district, the most affected party had provided a letter in support and

photographs were provided to show that the sign could not be seen from the PS district and the park that was near the sign.

With respect to the transportation display guidelines, the Appellant submitted that the sign was fully compliant with the LUB setback. Counsel also referred to provisions in the Municipal Government Act, specifically s. 687(3) and referenced what the SDAB could refer to in rendering its decision and submitted that the guidelines were not part of the listed items.

Mr. Dunn from Bunt & Associates had a presentation relating to the location of the sign and its impact on traffic. He submitted that the sign was outside of the restricted area around traffic signals. He also referred to the City's traffic statistics and suggested that no conclusions could be drawn between the location of the digital display and traffic accidents at this location. The City provided statistics for 2018, for this intersection only and Mr. Dunn submitted that no conclusion could be drawn and that the increase was within the historical range for this intersection.

The Appellant submitted that the conditions proposed by the City were acceptable.

The Board also considered/reviewed the following

The Board considered the letters presented by the Appellant. The most directly affected property which was operated by the Salvation Army provided a letter in support. The Appellant also provided a letter of support from the St. Albert Chamber of Commerce.

The Board also referred to the various written submissions provided by the City and the Appellant, along with the fulsome oral submissions from both the Appellant and the City.

The Board finds the following:

Allowed with conditions:

The Subdivision and Development Appeal Board of the City of St. Albert hereby grants the Appeal for a billboard sign with a digital display located at 590 St. Albert Trail.

The development is approved with the following conditions:

1. Approval is for one Billboard Sign with a Digital Display; a discretionary use under the provisions of Section C.5 (2)(a) of Schedule C, Sign Regulations of the Land Use Bylaw.
2. The maximum area of a billboard with a digital display sign must not exceed 18.6 sq.m. as per Section C.5(2)(c) of Schedule C, Sign Regulations of the Land Use Bylaw.

3. The sign copy shall be static and remain in place for a minimum of six (6) seconds before switching to the next copy. Transitions must be instantaneous.
4. Transitions between each digital display copy shall not involve any visible effects, including but not limited to: action, motion, fading in or out, dissolving, blinking, intermittent or flashing light, or the illusion of such effects.
5. Copy shall not be shown on the digital display showing full motion video, movies, Motion Picture Experts Group (MPEG), or any other non-static digital format.
6. The proposed billboard sign with a digital display shall be located a minimum 30.5m from a roadway intersection, to all outermost edges of the sign (not just the post). It is the responsibility of the applicant to establish the exact location of all property lines.
7. The maximum period for which a development permit may be issued for a billboard sign with a digital display is two (2) years from the date of decision of the Subdivision and Development Appeal Board. Upon application and reassessment, the Development Officer may issue a development permit for a billboard sign with a digital display for up to five (5) additional years. Should the sign permit not be approved, the owner of the sign has six (6) months from the date of expiry to remove the sign.
8. The proposed billboard sign with a digital display shall not exceed 8.0m in height, measured at right angles from the highest point of the sign or sign structure to the lowest point of finished grade directly below.
9. The proposed billboard sign with a digital display shall be located in accordance with the approved site plan.
10. The proposed billboard sign with a digital display may advertise third-party advertising only.
11. The brightness of the billboard sign with a digital display must be equipped with an ambient light sensor, in accordance with the following:
 - a) The ambient light sensor shall automatically adjust the brightness level of the copy area based on ambient light conditions; and
 - b) Brightness levels of the digital display shall not exceed 0.3 footcandles above ambient light conditions when measured from the digital display face at its maximum brightness

12. The proposed billboard sign with a digital display shall not display nor be illuminated with a flashing light source.
13. At any time, if a Development Officer determines that the brightness or light level of a digital display exceeds the limits set out in subsection C.5(1)(xii)(B), the Development Officer may direct the development permit holder to change the settings in order to bring the digital display into compliance with this Bylaw, and if that direction is not complied with, the Development Officer may issue an order directing that the digital display be immediately discontinued.
14. If any component on the sign fails or malfunctions in any way and fails to operate as indicated on the approved development permit plans, the sign owner

shall ensure that the sign is turned off until all components are fixed and operating as required.
15. Copy shown in a manner requiring the intended message to be viewed over multiple copy transitions is not permitted.
16. The proposed billboard sign with a digital display shall not impede or block safe traffic sightlines nor be constructed or located such that it interferes with the safe or orderly movement of pedestrian, motor vehicles or the sightlines under this or any other Bylaw, to the satisfaction of the Development Officer.
17. The proposed billboard sign with a digital display shall not obstruct the view of, or be confused with an official traffic sign, signal or device, as determined by the Development Officer in consultation with Engineering Services.
18. Encroachment of the billboard sign with a digital display over any utility rights-of-way shall be subject to the approval of applicable approving authorities.
19. The proposed billboard sign with a digital display shall be located entirely on the subject lot and shall not project or encroach onto City property or rights-of-way.
20. Underground power is to be supplied to the proposed billboard sign with a digital display sign at the responsibility and cost of the applicant.
21. Wiring and conduits for an electrical sign must be concealed from view to the satisfaction of the Development Officer.
22. It is the responsibility of the applicant to ensure the proposed billboard sign with a digital display is constructed and installed in accordance with the requirements of the Alberta Building Code and/or proper engineering standards.

23. It is the responsibility of the applicant to obtain the consent of the property owner for the location of the sign.
24. Any proposed changes in design, elevation or site plan configuration shall first be submitted for review by the Development Officer and any such changes shall not be undertaken until written authorization is provided by the Development Officer.
25. The sign owner shall provide a name and telephone contact information of a person having access to the technology controls for the sign, who can be contacted 24 hours a day in the event that the sign malfunctions.

The Board makes its decision for the following reasons:

- 1 The Board concludes that (in accordance with section 687(3)(d) of the Municipal Government Act) the variances sought will not unduly interfere with the amenities of the neighbourhood, and/or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land based on the following because:
 - a. The most affected neighbour was consulted and advised he has no issue with the variance; and
 - b. There were no objections from any of the other neighbours.

The Board had concerns with the potential effect that the digital image sign might have on traffic accidents at the intersection of St. Albert Trail and Giroux Road/Boudreau Road.

The statistical evidence before the Board indicated that this intersection has amongst the highest number of accidents in St. Albert. The bare numbers for 2018 indicated that they were up over the prior year. It was during late 2018 that the original sign, with text only, became operational. Although there was no correlation shown between the two issues, members of the Board were concerned that the new digital display might contribute to increased accidents.

The Board however, based on the information before it, granted the Appeal but shortened the length of time period for which the Development Permit in condition 7 from 5 years to 2. This would allow the issue of the potential effect on accidents to be reviewed after the sign had been operational for approximately 3 years.

In granting the Appeal as indicated the Board was of the view that the operation of the Digital Display would not unduly interfere with the amenities of the neighborhood nor would it materially affect the use, enjoyment or value of neighbouring parcels.

The Applicant is responsible for complying with all applicable federal, provincial and municipal enactment and any other applicable law and for obtaining all applicable permits, licenses and approvals. Building permits must be obtained from the Building Inspector who can be contacted at 780-459-1655.

Corrigendum to the Decision issued August 13, 2019

The following Notes approved by the SDAB and forming part of its decision, were omitted in error from the SDAB's Decision dated August 13, 2019:

NOTES:

1. A person applying for, or in possession of, a valid development permit is not relieved from full responsibility for ascertaining and complying with or carrying out development in accordance with the conditions of any covenant, caveat, easement or other instrument affecting the building or land.
2. The applicant shall be responsible for compliance with all applicable Federal, Provincial and Municipal laws, regulations and standards, as well as ensuring compliance with, and be responsible for obtaining, all applicable permits, licenses and approvals, at its own expense.
3. All construction must conform to the relevant requirements of the Alberta Building Code, the City of St. Albert municipal engineering standards and all applicable codes, laws, regulations and standards.
4. The City of St. Albert does not conduct independent environmental checks of land within the city. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of St. Albert, in issuing this 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 or within the property.
5. The city property on or adjacent to development including, but not limited to; the existing sidewalk, curb and boulevard features shall be protected from damage throughout the construction process. Damage caused by the owner, builder, tradesman or suppliers shall be repaired to the satisfaction of the City of St. Albert Engineering Services. An inspection of the existing site conditions must

be completed by city staff prior to commencement of the work. All snow and debris shall be removed from the sidewalk areas for the inspection. If necessary, a city representative will contact the applicant and request the site be cleared for inspection, prior to demolition and commencement of construction.

6. An on street construction permit is required for any construction taking place on City property including but not limited to driveway construction. Contact Engineering Services at 780-459-1654 to obtain the permit.



Chair

 AUGUST 15/2019
Date