

MINUTES of the **Subdivision & Development Appeal Board** held on **Thursday, October 4, 2012 at 4:00 p.m.** in Council Chambers with the following in attendance:

<b>MEMBERS:</b>	V. Chester	Vice Chairman
	A. Haesler	Member at Large
	J. Mauro	Alderman
	R. Parker	Alderman
	R. Stein	Member at Large
<b>OTHERS:</b>	G. Stevenson	Development Officer
	D. Sarsfield	Secretary to the Board

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### **SDAB HEARING 2012-04**

**Appellant: Grant Gatto**

To erect a fascia sign and a request for an 8.95 m<sup>2</sup> waiver of the maximum sign area at 1009 Mayor Magrath Drive South.

Development Application No. DEV04472  
Land Use District: C-H (Highway Commercial)

There were no objections when the Vice Chairman asked if anyone present had a lawful reason why any particular member(s) of the Board should not hear this appeal.

#### **Development Officer's Presentation:**

**Gepke Stevenson, Senior Development Officer**, outlined the case. A development permit was issued for the fascia sign on March 12, 2012. It was noted by Development Services that the unit frontage was miscalculated after the sign was installed. As a result, the permit was cancelled in accordance with Section 5.11.1.3 of the Land Use Bylaw 5700. The applicant chose to make a new development application on July 10, 2012 requesting the necessary waiver of the maximum allowable area for a fascia sign. The Municipal Planning Commission heard the application on August 14, 2012 and granted the waiver while the sign and business were in place.

Land Use Bylaw 5700 requires that "if a building is divided into units, some or all of which have individual frontages, and individual fascia signs are proposed for the individual unit frontages, the Development Authority may limit the area of an individual unit's fascia sign(s) to the equivalent of 15% of the area of the exterior frontage wall of the unit." The required waiver would exceed the standard sign area of 3.68 m<sup>2</sup> (15%) by 8.95 m<sup>2</sup> (36%), resulting in a sign area of 12.63 m<sup>2</sup> (51%).

The proposed sign had been approved by the Building Manager.

Letters were sent to the landowners within a 60 m radius of the parcel. One letter of objection was received. Of the thirteen accessory buildings within the 60 m radius of the parcel, only one had received a building height waiver (of 0.63 m).

**Appellant's Presentation:**

**John Gatto, owner of Pirate's Cove Collectibles**, outlined the grounds for the appeal. The following was stated:

- Grant Gatto, son of John Gatto, was the appellant
- Size of the sign is oversized compared to other signs in the area, in the City, and beyond
- Regulations should be followed
- Proposed sign is more than three times what is permitted
- Sign does not show any CSA seal
- Sign is larger than the existing sign for Travel Lodge
- Adjusting the size of the sign will not impede business
- Approval of the sign will set a precedent
- Development Services do not recommend approval to the Municipal Planning Commission
- Miscalculation error should not result in the approval of the sign

Photographs of comparable businesses in Town were circulated to the Board.

**Applicants' Presentation:**

**Ed and Maura Keet, managers of Savers Store**, outlined their case. The following was stated:

- Savers Store is a tobacco only store, preventing anyone under the age of 18 from coming in the store
- Children cannot see in or come in the store
- Type of store is the second in the City and the third in the Province
- Tobacco is a legal product and has been around for thousands of years
- Researched the business for about six months
- Did not put up the sign until they had received approval from Development Services
- Business cannot advertise or put out flyers; the sign is the only means of getting the message out
- Employ ten to twelve people
- Business will not work if the sign is reduced in size
- Building was updated so everything is brand new
- Sign was constructed by a third party so can check with them if the sign is CSA approved

**There were no other presentations either in support or in opposition to the appeal.**

**Discussion:**

The Board addressed the following issues during question period:

- Feasibility of having a smaller size
- Timeline for the application and sign installation
- Application submission process
- Calculation methods for the sign
- Role of Alberta Liquor and Gaming Commission
- Supplier of the sign and their experience with sign production
- Existing signs that exceed the 15% waiver

- Applicant's awareness of the excessive size of sign
- Notification process and differences between landowner and tenant
- Process for the sign approval
- Developer's commitment to the site and current sign

**Rebuttals:**

Mr. and Mrs. Keet stated they did everything by the book and did their due diligence. The role of Alberta Gaming and Liquor Commission was outlined. They stated that they did not make the mistakes with the sign as they waited until approval was granted. They concluded by stating they just wanted to run their business.

Mr. Gatto stated that he has been in business his whole life. He regarded the sign approval as a flagrant violation. Mr. Gatto concluded the sign needed to be changed and hoped the Board did not make a decision based on a previous mistake by the City

**Decision:**

IN THE MATTER OF the Municipal Government Act

AND IN THE MATTER OF an Appeal made to the Subdivision and Development Appeal Board with respect to:

**Appellant: Grant Gatto**

To erect a fascia sign and a request for an 8.95 m<sup>2</sup> waiver of the maximum sign area at 1009 Mayor Magrath Drive South.

AND UPON HEARING from the Development Officer, the Appellant, the Applicant, and other interested parties,

AND UPON CONSIDERING the relevant provisions of the Municipal Government Act, the Municipal Development Plan, the Land Use By-law, any applicable Statutory Plans, and the circumstances and merits of this case, the decision of the Subdivision and Development Appeal Board is as follows and for the following reasons:

**V. CHESTER/A. HAESLER/J. MAURO/R. PARKER/R. STEIN**

**DECISION:** The Appeal is **UPHELD** and the decision of the Municipal Planning Commission regarding Development Permit DEV04472 on August 14, 2012 to erect a fascia sign and a request for an 8.95 m<sup>2</sup> waiver of the maximum sign area is **REVOKED**. The Applicant is given until November 1, 2013 to remove the sign.

**REASONS FOR DECISION:**

The sign was built and installed after a development permit was obtained from the City. However, the sign does not comply with the Land Use Bylaw requirements. The Board is granting a one year period for the removal of the sign.

-----**CARRIED**

**SDAB HEARING 2012-05**

**Appellants:** James R. Farrington Professional Corporation  
 1213382 Alberta Ltd.  
 1613256 Alberta Ltd.  
 Condo Corp. 0711669  
 Lethbridge Denture Clinic Ltd.

To construct a 3 storey, twelve unit apartment building (6,294 sq. ft. per floor) and request a 5.78 m (18'11") south side setback waiver at 317 – 17 Street South

Development Application No. DEV02901  
 Land Use District: C-G (General Commercial)

There were no objections when the Vice Chairman asked if anyone present had a lawful reason why any particular member(s) of the Board should not hear this appeal.

**Development Officer's Presentation:**

**Jason Price, Development Officer**, outlined the case. A development permit was issued for a twelve unit, 2.5 storey apartment building with a side setback waiver on February, 2011. This was appealed, and the Subdivision and Development Appeal Board denied the appeal on April 8, 2011, finding that "the discretionary use did not materially interfere with the existing businesses in the neighbourhood".

The Applicant revised the plans to be a three storey building so as to include an elevator. These drawings were approved by the Development Officer on October 20, 2011. No notification of the change was sent out. The Development Officer stated there was no change to the previously approved use or increase in the number of dwelling units. Further, a three storey building was allowed in the C-G (General Commercial) District.

**Appellant's Presentation:**

**James Farrington, James R. Farrington Professional Corporation**, outlined the grounds for the appeal. The following was stated:

- Noticed that the building being constructed was different from that was submitted at the 2011 SDAB Hearing
- Received copies of the revised plans in September, 2012
- Appeal filed under the fairness of natural justice as one set of plans was approved by the SDAB, and a second set of plans was then approved by the Development Officer
- Use is not a permitted or discretionary use under the new Land Use Bylaw
- Revised plans were approved October 20, 2011, which is after the approval date of September 1, 2011 for the new Land Use Bylaw
- Approved apartment building does not have any commercial component so does not comply as a "dwelling, apartment mixed use" which is listed under the new zoning
- Still have parking concerns
- Building is already framed

**Applicant's Presentation:**

**Mohsen Mahmoud, Chinook Homes by Chinook Construction**, outlined his case. The following was stated:

- Been in business for thirty years
- Built a similar building on 11 Street South
- Had criticism from potential tenants that needed an elevator for seniors
- Certificate of title gives him the right to build
- Two thirds of the building faces the parking lot, with the other third of the building faces Mr. Farrington's building
- Turning vacant lots in the downtown core into condominiums
- Bought the property with good intentions

**Other Presentations:**

**Bob Beaton, Stay Tuned Installations**, outlined his reasons for opposing the development. The building is very close to his business. Mr. Beaton did not believe that a residential project would improve the character of the neighbourhood.

Mr. Beaton stated there was no way that a person can park in front of new building project without impacting the parking in front of the existing strip mall. He stated that no one will wish to reside in the building, next to a school.

**Horst Mueller, owner of 346 and 350 – 18 Street South**, was opposed to the development. He was concerned with the effect that the building will have on his value of his property. One of the existing tenants, WebTech, is looking at a different location because of access problems. Maxwell Realty was also concerned with the impact on their business. Mr. Mueller stated that if he loses a tenant, his revenue stream will be lost. The development does not add value to the neighbouring properties.

It was stated that the current access for Maxwell Realty is not good. It is difficult for the dumpster to be picked up and the Fire Department will have difficulty in reaching the hydrant on 18 Street South.

**There were no other presentations either in support or in opposition to the appeal.**

**Discussion:**

The Board addressed the following issues during question period:

- Review of the decision made at the previous appeal hearing
- Changes to the development plans
- Definition of a non-conforming building
- Differences in the roof height from the previous plan to the current plan
- Construction of the trusses
- Review of the first application
- Change in the Land Use Bylaw requiring side yard setback
- Purpose of the development permit
- Rationale for approval of the revised plans by the Development Officer
- Differences in Land Use Bylaw 4100 and 5700
- Conforming building with both Bylaw 4100 and 5700

- Feasibility of having a smaller sized building

**Rebuttals:**

Mr. Mahmoud stated that he started developing the property right after receiving the development permit issued by the SDAB. The Board previously gave him permission to proceed with the development when they turned down the previous appeal. He has built a building that conforms to the size and to the lot.

Mr. Farrington stated that the plans were not approved until October 20, 2011. The change from a 2.5 storey building to a 3 storey building was a fundamental change, and under the current Land Use Bylaw, is an illegal use.

Mrs. Stevenson requested permission to give a rebuttal. The Board decided to allow her to present a rebuttal. Mrs. Stevenson stated that Section 5.11.4 of the Land Use Bylaw gave the discretion to the Development Officer to determine whether a new application is required.

**V. CHESTER/A. HAESLER/R. PARKER/R. STEIN**

**DECISION:** The Appeal is **UPHELD IN PART** and accordingly the decision of the Development Officer regarding Development Permit DEV02901 on October 20, 2011 to construct a three storey, twelve unit apartment building (6,294) square feet) is **VARIED** by adding the following condition:

1. The ground floor shall be designated for commercial space.

**JURISDICTION:**

The Subdivision and Development Appeal Board determined the Development Permit issued on February 27, 2011 and confirmed by the Board on April 7, 2011 was valid. The Development Officer subsequently did have the right to approve any changes to the plan as outlined in the first condition of the Development Permit.

An appeal was filed when the Appellant became aware there was a change in the plans. Since the Board does have the right to review the decision of the Development Officer, the Board does have the jurisdiction to rule on the matter.

**REASONS FOR DECISION:**

The Subdivision and Development Appeal Board is in acceptance of the development. However, the Board did find a fundamental difference in the plans between the 2.5 and the 3.0 storey building. These amendments to the Development Permit made by the Development Officer came after the new Land Use Bylaw came into effect September 1, 2011 and did not address new land uses.

The Board is aware that the new Land Use Bylaw does not list a "Dwelling, Apartment" as either a permitted or a discretionary use. In order for the development to conform with the new Land Use Bylaw and the discretionary use of "Dwelling, Apartment Mixed Use", commercial space shall be designated for the ground floor.

-----**CARRIED**

**AGAINST: J. MAURO**

**R. STEIN:**

THAT this meeting of the Subdivision and Development Appeal Board be adjourned.

-----**CARRIED**

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CHAIRMAN

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SECRETARY TO THE BOARD