
RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2019 - 17

RESPONDENT: City of Saskatoon, Community Services Department, Planning and Development

In the matter of an appeal to the City of Saskatoon, Development Appeals Board by:

TRIOVEST

respecting the property located at:

Lot: -	Block: -	Plan: 102231942, Unit 2
Civic Address: 409 3 rd Avenue South		

IN ATTENDANCE:

Before

Mr. Asit Sarkar, Chair
Ms. Leanne DeLong, Vice-Chair
Mr. Len Kowalko, Member
Ms. Tonii Lerat, Member

**Appeared for
the Appellant**

Mr. Blair Sinclair, Triovest

**Appeared for
the Respondent**

Mr. Matt Grazier, Bylaw Compliance Manager, Community Standards, Community Services, City of Saskatoon

The appeal was heard in Committee Room "E", Ground Floor, City Hall in the City of Saskatoon on July 23, 2019

PRELIMINARY ISSUES:

The Appellant and Respondent affirmed their testimonies would be the truth.

GROUND AND ISSUES:

Triovest has filed an appeal under section 219(1)(b) of *The Planning and Development Act, 2007*, in connection with the City's refusal to issue a sign permit for freestanding signs and wall signage. The property is zoned DCD1 under *Zoning Bylaw No. 8770* and the appellant is appealing the following deficiencies:

Requirement: Section 13.1.3.4(c) of the Zoning Bylaw states that the regulations applicable to Signage Group 5 of Appendix A-Sign Regulations will govern the use of signs in DCD1 except that portable signs, billboards, superboards, electronic message centres and electronic message centres (mobile) are prohibited.

Section 2.1.12 of Appendix C-South Downtown Local Area Design Plan states that no internally lit signs, other than for internally lit awnings, shall be permitted.

Proposed: Based on the information submitted, the following internally lit signs are proposed:

- Two (2) primary tenant signs
- Three (3) plaza dedication signs
- Two(2) wall signs

Deficiency: No internally lit signs are permitted on the site.

EXHIBITS:

- | | |
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| Exhibit A.1 | Notice of Appeal received July 3, 2019. |
| Exhibit R.1 | Letter dated June 19, 2019 from the Community Services Department, Planning & Development Division, to Triovest. |
| Exhibit R.2 | Location Plan and Site Plan from Planning & Development Division, Community. Services Department, received July 12, 2019. |
| Exhibit B.1 | Notice of Hearing dated July 8, 2019. |

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representative, Mr. Sinclair presented the evidence and arguments below.

Mr. Sinclair asked for the denial to be overturned. He advised the Board that a precedent has been set with previous illuminated signage in the area. He stated that Triovest is obligated under the development agreement with City of Saskatoon for River Landing to place illuminated signage on the building.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

The Respondent representative from the City of Saskatoon, Bylaw Compliance Manager Grazier, Community Standards Division presented the evidence and argument below.

An application was received for a sign permit for seven signs located at 409 3rd Avenue South, consisting of five freestanding signs and two wall signs. This property is zoned DCD1 District (Direct Control District 1) in the City's Zoning Bylaw. This is a mixed use development site which will include office, hotel, multi-family and retail development forms.

Two proposed freestanding signs are located adjacent to the west property line, two freestanding signs are located adjacent to the north property line and one freestanding sign is located adjacent to the south property line. Two proposed wall signs are located along the east and west elevations of the easterly most building.

DCD1 zoned properties are bound by Appendix C in the Zoning Bylaw - South Downtown Local Area Design Plan. Section 2.1.12 states that no internally lit signs, other than for internally lit awnings, shall be permitted. As a result, the sign permit application was denied.

The Community Services Department supports the granting of this appeal for the following reasons.

1. It is not felt that granting this appeal would be granting the applicant a special privilege inconsistent with the restrictions on the neighboring properties in the same district. The proposed signage promotes a look consistent with the site. The design guidelines were developed in 2004 and the signage industry has seen a number of technological changes that are not reflected in this document. The Community Services Department is currently undertaking a review of the Zoning Bylaw including potential amendments to this provision.

The board has previously considered several similar appeals on this site and the nearby Persephone and art gallery sites, all of which have been approved.

2. It is not felt that granting this appeal would amount to a relaxation so as to defeat the intent of the Zoning Bylaw. The South Downtown Local Area Design Plan suggests that architectural controls are intended to ensure a high quality development and to create a safe and animate destination for people during all seasons. It is felt that the

proposed signage meets the intent of the bylaw and will contribute to a strong sense of identity for the south downtown.

3. It is not felt that granting this appeal would injuriously affect the neighbouring property owners. No comments have been received on this appeal and the City notes the presence of several existing lit signs on this site and adjacent sites

RULES AND STATUTES:

Section 219, Subsections (1) – (5) of *The Planning and Development Act, 2007* governs the right of appeal, as follows:

- 219 (1) *In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is:*
- (a) *an alleged misapplication of a zoning bylaw in the issuance of a development permit;*
 - (b) *a refusal to issue a development permit because it would contravene the zoning bylaw; or*
 - (c) *an order issued pursuant to subsection 242(4).*
- (2) *Notwithstanding subsection (1), there is no appeal pursuant to clause (1)(b) where a development permit was refused on the basis that the use in the zoning district for which the development permit was sought:*
- (a) *is not a permitted use or a permitted intensity of use;*
 - (b) *is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council; or*
 - (c) *is a prohibited use.*
- (3) *In addition to the right of appeal provided by section 58, there is the same right of appeal from a discretionary use as from a permitted use.*
- (4) *An appellant shall make his appeal pursuant to subsection (1) within 30 days after the date of the issuance of or refusal to issue a development permit, or of the issuance of the order, as the case may be.*
- (5) *Nothing in this section authorizes a person to appeal a decision of the council:*
- (a) *refusing to rezone the person's land; or*
 - (b) *rejecting an application for approval of a discretionary use.*

Section 221 of *The Planning and Development Act, 2007*, governs the determination of an appeal as follows:

- 221 *In determining an appeal, the board hearing the appeal:*
- (a) *is bound by any official community plan in effect;*
 - (b) *must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;*

- (c) *must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and*
- (d) *may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:*
 - (i) *grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;*
 - (ii) *amount to a relaxation so as to defeat the intent of the zoning bylaw; or*
 - (iii) *injuriously affect the neighbouring properties.*

Section 13.1.3.4(c) of the Zoning Bylaw states that the regulations applicable to Signage Group 5 of Appendix A-Sign Regulations will govern the use of signs in DCD1 except that portable signs, billboards, superboards, electronic message centres and electronic message centres (mobile) are prohibited.

Section 2.1.12 of Appendix C-South Downtown Local Area Design Plan states that no internally lit signs, other than for internally lit awnings, shall be permitted.

APPLICATION/ANALYSIS:

In determining the appeal, the Board was governed by Section 221 of *The Planning and Development Act, 2007*.

1. Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district?

The Board heard from the Respondent that the South Downtown Design guidelines were developed in 2004 and the signage industry has seen a number of technological changes that are not reflected in this document. The Community Services Department is currently undertaking a review of the Zoning Bylaw including potential amendments to the sign provisions.

Based on the evidence before it, the Board finds that granting the appeal would not be granting a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district. The proposed signage would be consistent with the atmosphere in River Landing and with similar signage on adjacent properties.

The appeal, therefore, passes the first bar of entitlement.

2. Does the granting of this appeal amount to a relaxation of the provisions of the Zoning Bylaw so as to defeat the intent of the Zoning Bylaw?

The Board's interpretation of the Zoning Bylaw regulations is to allow businesses to advertise while maintaining reasonable standards of public safety and community aesthetics. Although the proposed signs will be internally lit, the Board is of the opinion that the proposed sign does not pose any issues with safety and will be aesthetically pleasing, meeting the intent of the South Downtown Design Plan. For these reasons, the Board concludes granting the appeal would not amount to a relaxation so as to defeat the intent of the Zoning Bylaw.

The appeal, therefore, passes the second bar of entitlement.

3. Does the granting of this appeal injuriously affect the neighbouring properties?

No letters of objection were filed in opposition to this appeal from neighbouring property owners. There was no evidence before the Board to prove that the proposal would directly result in unreasonable interference in the use and enjoyment of neighbouring properties.

The appeal, therefore, passes the third bar of entitlement.

DECISION:

THAT the appeal be GRANTED.

DATED AT SASKATOON, SASKATCHEWAN, THIS DAY OF , 2019.

CITY OF SASKATOON DEVELOPMENT APPEALS BOARD

Asit Sarkar, Chair

TAKE NOTICE that in accordance with Section 226(1) of *The Planning and Development Act, 2007*, the minister, the council, the appellant or any other person may appeal a decision of the Development Appeals Board to the Saskatchewan Municipal Board. In the event that no such appeal is made, this Decision becomes effective after the expiry of 30 days from the date of the Decision of the Development Appeals Board.

A notice of appeal form can be downloaded from **www.publications.gov.sk.ca** (select Saskatchewan Municipal Board from the Ministry list, and select Notice of Appeal to the Planning Appeals Committee). The notice of appeal must be filed, **within 20 days after being served with this Record of Decision**, to:

Planning Appeals Committee
Saskatchewan Municipal Board
4th Floor, Room 480
2151 Scarth Street
Regina, SK S4P 2H8
(Telephone: 306-787-6221; FAX: 306-787-1610; info@smb.gov.sk.ca)

An appeal fee of \$50 is also required by the Planning Appeals Committee. Cheques should be made payable to Minister of Finance. Your appeal will be considered received on the date the appeal fee and the notice of appeal have both been received.

Please note a copy of the notice of appeal must also be provided to the Saskatoon Development Appeals Board, c/o The Secretary, Development Appeals Board, City Clerk's Office, City Hall, Saskatoon, SK, S7K 0J5.

For additional information, please contact the Planning Appeals Committee, Saskatchewan Municipal Board, at the address and/or telephone number indicated above.