

SUBDIVISION AND DEVELOPMENT APPEAL BOARD MINUTES (SDAB)



Meeting:	Subdivision and Development Appeal Board (SDAB)
Meeting Date:	January 20, 2022
Originated By:	K. Babin
Title:	Minutes of SDAB Hearing 22-001
Agenda Item No.	3

BACKGROUND:

Minutes of SDAB Hearing 22-001



SUBDIVISION AND DEVELOPMENT APPEAL BOARD MINUTES

For SDAB Hearing No. 22-001

TIME: 6:30 pm
DATE: January 20, 2022
PLACE: Live Stream

Chairperson: Scott Shannon

Board Members: Ashley Marshall
Brenda Samborski
Hayley Gavin
Mark Cardwell

Administration: Nicole Tomes, Senior Planner
Mike Korman, Interim Director, Planning &
Development Services

SDAB Clerk: Karen Babin

1. **CALL TO ORDER**

- a. MOVED by S. Shannon to open the hearing
Carried Unanimously
- b. The hearing was opened at 6:35 pm

2. **APPOINTMENT OF CHAIRPERSON**

- a. MOVED by A. Marshall to appoint Scott Shannon as the Chairperson
Carried Unanimously
- b. Introductions were made from the Board and Administration
- c. Chairperson Shannon asked if anyone had any objections to any member of the Board
 - i. There were no objections to any member of the Board

3. **ADOPTION OF AGENDA AND MINUTES**

- a. MOVED by M. Cardwell to adopt the Agenda as presented
Carried Unanimously
- b. MOVED by A. Marshall to adopt the Minutes from SDAB 21-005 as presented
Carried Unanimously

4. APPEAL

a. The Chairperson asked the Clerk to introduce the appeal

i. The Clerk read out the appeal as follows:

DP2021-177

320 Fifth Avenue West

LOT 2, BLOCK 3, PLAN 001 1035

Back-Lit Freestanding Signs (2) with Variances

b. The Chairperson asked the Clerk if this Appeal had been duly advertised

The Clerk stated that the Notice of Appeal had been advertised in the January 13th edition of the Cochrane Eagle as well as sent out to adjacent landowners

5. OUTLINE OF HEARING PROCESS

a. The Chairperson outlined the hearing process for all present

There were no concerns with the process from the Appellant, Administration or any members of the audience

b. The Chairperson asked the Clerk if each of the affected parties had received all materials in a timely fashion.

The Clerk replied that they had

6. PRELIMINARY MATTERS

a. There were no preliminary matters

7. PRESENTATIONS

a. Administration:

i. The Chairperson called upon the Development Officer to come forward and present their report

ii. Senior Planner, Nicole Tomes submitted a comprehensive Administrative Report and made an oral and visual presentation to the Board

iii. Questions were asked from the Board to Administration

b. Appellant:

i. The Chairperson called upon the Appellant to come forward and present their report

ii. James Murphy of Ogilvie LLP and representing the Appellant, submitted a report and made an oral presentation to the Board

iii. Questions were asked from the Board to the Appellant

c. Additional Presentations:

i. No additional presentations were made in favour of the appeal

ii. Randy Mabbott of Grand Central Properties Inc., an adjacent property owner, spoke in opposition to the appeal

8. QUESTIONS AND SUMMARIES

a. Final questions for clarification were asked

- b. Summaries were presented from Administration and the Appellant
- c. The Chairperson asked if all parties involved felt they were given a fair hearing
 - i. All parties agreed they were given a fair hearing

9. CLOSE

- a. MOVED by H. Gavin to close the hearing
Carried Unanimously
- b. The Chairperson advised that the Board had 15 days to reach their decision
- c. Chairperson Shannon adjourned the hearing at 8:03 pm
- d. MOVED by A. Marshall to go in-camera
Carried Unanimously

DATED this 2nd day of February, 2022

Original signed by Scott Shannon

Scott Shannon, Chairperson

Original signed by Karen Babin

Karen Babin, SDAB Clerk

TOWN OF COCHRANE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

BOARD ORDER: 22-001

IN THE MATTER OF THE *Municipal Government Act*, R.S.A. 2000 Chapter M-26 (Act)

AND IN THE MATTER OF AN APPEAL FROM AN ORDER lodged by PM Signs c/o Permit Solutions, of
Richmond, BC (Appellant)

BEFORE:

Scott Shannon, Chairperson
Ashley Marshall
Brenda Samborski
Hayley Gavin
Mark Cardwell

Karen Babin, SDAB Clerk

This is an appeal to the Town of Cochrane Subdivision and Development Appeal Board (SDAB) of the Development Authority, being the Notice of Decision to approve Development Permit 2021-177 for Two Back-Lit Freestanding Signs with Variances at 320 Fifth Avenue West, Plan 001 1035, Block 3, Lot 2, in the Town of Cochrane (Town).

A hearing to consider the appeal was convened by the SDAB on January 20, 2022, commencing at 6:30 pm via video conferencing. The live stream was available for viewing on the Town's website at [Cochrane.ca/SDAB](https://www.cochrane.ca/SDAB).

I. BACKGROUND

Development Permit application DP2021-177 is for Two Back-Lit Freestanding Signs with Variances. The proposed application is located at 320 Fifth Avenue West. The subject property is designated Commercial Shopping Centre (C-SC).

The Cochrane Planning Commission (CPC) was the Development Authority for the application as Back-Lit Signs are a Discretionary Use and the variances requested were greater than 10%. The application was refused at the December 15, 2021 meeting of CPC.

The Appellant appealed this decision as per section 685(1) of the *Municipal Government Act*, RSA 2000, c. M-26 (MGA), the person applying for the permit may appeal the decision if a development authority fails or refuses to issue a development permit.

II. DETERMINATION OF THE BOARD

The Appeal is upheld and the decision of the Development Authority is overturned as per the reasons outlined in section V Decision.

III. APPEARANCES and SUBMISSIONS

The Board received oral and/or written submissions from:

- a) James Murphy, legal counsel for PM Signs c/o Permit Solutions, the Appellant
- b) Nicole Tomes, on behalf of the Development Authority
- c) Randy Mabbott, against the Appeal

The Board also received a written submission from:

- d) Marcey and Doug Skye, against the Appeal

The following was further presented during the hearing and forms part of the record:

Addendum 1 – PowerPoint Presentation submitted by the Development Authority.

IV. BACKGROUND and SUMMARY OF EVIDENCE

- a) Submission of the Development Officer
- A development permit application for two (2) freestanding back-lit signs with variances located at 320 Fifth Avenue West was submitted and deemed to be complete on October 27, 2021.
- One of the signs is a sign face replacement of the existing freestanding back-lit and changeable message sign. It is located along Fifth Avenue West, facing east-west. This sign directly faces a residential development. There are no foreseen conflicts with the adjacent uses.
- The second proposed freestanding back-lit sign is new and will be located near the east entrance to

the property along Griffin Road, facing east-west. The adjacent uses are commercial or industrial.

- Within the C-SC district, freestanding signs are listed as a permitted use and back-lit signs are listed as a discretionary use. The Development Officer has the ability to grant a variance up to a maximum of 10%; however, as this application required two variances both greater than 10% it was referred to CPC for a decision.
- Administration reviewed the application against the following statutory and non-statutory planning documents:
 - [Municipal Development Plan](#), Bylaw 07/2008 (MDP)
 - Planning Principle 4, Economic Vitality: “economic vitality provides the foundation for a healthy, diverse, active prosperous and resilient economy”. Goal 1 is to “offer a range of employment and economic opportunities”.
 - This property has been vacant for some time and re-development will bring in new businesses.
 - [Western Heritage Design Guidelines](#), 2000 (Guidelines)
 - The guidelines recommend signage within this area be mounted directly on the front or side of a building and be front lit by decorative incandescent lamps. Back-lit signs are discouraged.
 - While the LUB was amended to allow back-lit signs as a discretionary use, these Guidelines were not updated to reflect this change.
 - [Downtown Area Redevelopment Plan](#), Bylaw 05/2005 (DARP)
 - This property is located in Character Area 6 – Shopping Centres where a key design consideration is to emphasize the significance of entries through additional landscaping, signage, and lighting.
 - [Land Use Bylaw 01/2004](#) (LUB)
 - The application was found to comply with all back-lit sign requirements except for dimming between the hours of 22:00 and 06:00.
 - Back-lit signs must reduce their brightness by half, to a maximum of 3,000 lumens, during the overnight hours. In this instance, the proposed sign will always produce 3,000 lumens. To be in strict compliance with the LUB, the lumens should be reduced to 1,500 between 22:00 and 06:00. The proposed 3,000 lumens however do meet the maximum allowable. A 100% variance is required.
 - The application was found to comply with all freestanding sign requirements except for maximum height and number allowable per lot. The LUB allows for a maximum of two (2) freestanding signs per lot with one per street frontage.
 - The height of freestanding signs must not exceed 7.0 m. The proposed sign height is 7.7 m, matching the existing freestanding sign on the property. The addition of a western heritage cornice feature, approved and installed in 1999 to meet the Guidelines resulted in the excess height. A variance of 10% is required.
 - A maximum of two (2) freestanding signs per lot are permitted, with one allowed per street frontage. There is an existing back-lit sign on the property located on the Fifth Avenue frontage that will be redone as part of this application. The second proposed sign is new and slated to be placed on the Griffin Road frontage. The four (4) freestanding signs previously approved on this property serve a different purpose. A 200% variance is required to allow this second sign.
- Circulation Comments
 - Circulation to external agencies did not garner any objections.
 - Circulation to internal departments resulted in one comment. Placement of the sign on the Griffin

Road frontage was within 10 m of the stop sign thus contravening Traffic Bylaw 02/2005. A Prior to Issuance condition was added requiring an updated site plan; however, the applicants submitted one prior to the CPC meeting. It is included as Attachment 8.

- One submission from an adjacent landowner was received in opposition to the proposed sign on the Griffin Road frontage. They cited future sign clustering and driver distraction as reasons as they intended to submit a sign application for this site entrance as well once the proposed Land Use Bylaw is adopted by Council. They wanted a joint sign with the Appellant and the proposed Land Use Bylaw provides for that.
- Ms. Tomes provided the following responses to questions from the Board:
 - CPC did not discuss the 100% variance request for the lumens. It is a technical variance as the sign will be set for 3,000 lumens at all times which is equivalent to half of the maximum allowed between 22:00 and 6:00.
 - While Council approved the amendment to the Land Use Bylaw adding back-lit signs, the Western Heritage Design Guidelines were not updated to reflect this change. The MDP, including the Guidelines, carry more authority than the Land Use Bylaw. The MDP is a high-level planning document that speaks to generalities while the LUB outlines the details how to implement the MDP.

b) Submission of the Appellant

- The Appellant is re-developing and re-vitalizing this property, the former site of Canadian Tire. While the proposed development is for two (2) back-lit freestanding signs, the westerly sign already exists and was the original Canadian Tire identifier and message board. The intent is for this structure to remain intact, replace the Canadian Tire identification space with three (3) tenant identification panels and remove the message board portion. The easterly sign will be constructed to match.
- After the application was deemed complete, the Appellant, in consultation with Administration, re-located the easterly sign outside of the 10m buffer zone of the existing stop sign in order to comply with Traffic Bylaw 02/2005.
- Mr. Murphy addressed the requested variances and subsequent refusal by CPC:
 - Height variance – the Appellant wishes to continue using the existing freestanding sign and to have the new sign on the Griffin Road frontage mirror it.
 - This sign at 7.7 m is 0.7 m taller than the allowable 7.0 m cited in the LUB. The addition of the decorative cornice in 1999 to meet the Guidelines resulted in the extra height.
 - It would be a waste of time and resources to remove this sign and rebuild. Twinning the signs will provide coordination of the existing theme.
 - The additional 0.7 m, in relation to the overall height, is barely noticeable and is a minor variance.
 - Total signs variance – there are four (4) other freestanding signs previously approved on this particular lot. Technically they count toward the total, but they are quite small and will be used by the patrons of the on-site restaurant. The addition of the freestanding sign on the easterly side necessitates a variance but is a variance that will impact no one.
 - Dimmable hours regulation – the LUB allows back-lit signs to be set at a maximum of 6,000 lumens during the day and reduced by half from 10:00 pm to 6:00 am. The Appellant proposes to limit the brightness of their signs to 3,000 lumens at all times. This variance is a technicality. Although

the lumens will not be reduced by half to 1,500 during the overnight hours, they meet the maximum allowable during this period.

- The Guidelines only discourages back-lit signs, it does not prohibit them.
- The LUB was amended to allow for back-lit signs in the Commercial Shopping Centre district.
- The existing freestanding sign that is part of this application has been in place for a number of years at the former Canadian Tire without causing any difficulty.
- Administration recommended approval of this application at CPC.
- Mr. Murphy provided the following responses to questions from the Board:
 - The original sign was back-lit and used strictly by Canadian Tire.
 - The proposed sign should not affect traffic. It has been moved further west so it is now farther from the stop sign and complies with the traffic bylaw. The property across Griffin Road is industrial so it will not be affected. The Quarry shopping district is fine with their back-lit signs.

c) In Favour of / Opposed to the Appeal

- Mr. Mabbott, opposed to the appeal:
 - He is an adjoining landowner and representing Grand Central Properties Inc. (GCPI) which owns the strip mall between Safeway and the former Canadian Tire.
 - They have no objection to the plans to renovate the existing sign, only the proposed sign at the east entrance on Griffin Road.
 - The entrance off Griffin Road and the strip of land on the east edge are owned by GCPI but the entrance is shared access to the development. The proposed sign will be just west of this entrance.
 - Until recently, the Town allowed a maximum of two pylon signs for this development (made up of 3 lots); one located by the TD Bank (now converted to digital) and the existing sign on the southwest corner. The Town has clarified their position to mean two pylon signs are allowed per lot for a multi-tenant development.
 - As the Appellant pointed out, there are technically more than two (2) freestanding signs approved; however, Mr. Mabbott stated they consider two freestanding signs to be pylon signs and have no objection to the others.
 - Only one freestanding sign per street frontage is permitted and the existing pylon sign on the southwest corner is already on Griffin Road. Another one facing Griffin is not necessary nor should it be permitted.
 - Additional signage on the back of the building and facing Griffin Road has been approved for a new tenant with additional applications coming. There is no need for an additional pylon sign at this entrance.
 - Allowing the Appellant's sign would interfere with their ability to place another pylon sign at this entrance as the piece of land is small and unique. They would block each other's views and create clutter along Griffin Road.
 - The proposed pylon sign would unduly interfere with the amenities of the neighbourhood.
 - The proposed new LUB restricts a second pylon sign within 100 m of the first meaning they would not be permitted a sign at that entrance. They only have one sign, and it faces Fifth Avenue.

- Mr. Mabbott noted they have tried to work with the Appellant to come to a mutually beneficial solution but were not successful. He believes there are other options the Appellant could consider to meet the same objectives.
- Mr. Mabbott believes the Appellant should bring forward a complete signage plan for the site as opposed to applying for them in a piecemeal fashion.
- Mr. Mabbott provided the following responses to questions from the Board:
 - The digital sign located by Edo's on Fifth Avenue is for GCPI tenants and is the only sign they have.
 - The development is made up of three (3) lots: Safeway, Grand Central Properties and the Appellant.
 - Mr. Mabbott explained if they were to install a pylon sign at the Griffin Road entrance it would be located on the grass strip on the east side of the entrance. The distance from property line to property line is 12.17 m. A 10 m buffer zone is required around the stop sign. The distance from the property line to the proposed sign is approximately 16.23 m.
- Marcey and Doug Skye, opposed to the appeal:
 - Mrs. and Mr. Skye are adjacent property owners and opposed to the requested variance to reduce lumens by half from 22:00 to 6:00.
 - Mrs. Skye provided a photo to show the distance between the existing sign and their home. She stated the former Canadian Tire sign was very bright at night and disruptive to their sleep.
 - They would be amendable to the proposed sign if it met 3,000 lumens during overnight hours or was turned off.
- d) Final comments
- Mr. Murphy made the following final comments:
 - Mr. Mabbott's objections sounded like business competition issues rather than planning issues.
 - Although the existing sign faces Griffin Road, it is north of the south wall of the building so is more in line with Fifth Avenue.
 - This lot is a defining lot for the development. They wish to be good neighbours and contribute to the area.
 - Back-lit signs are not prohibited by the Western Design Guidelines, they are allowed for in the LUB and the variances requested are technicalities. The sign will be illuminated at a constant 3,000 lumens which is half of the maximum daytime allowable and equal to the required dimness during the overnight hours.
- Ms. Tomes made the following final comments:
 - The cornice on top of the existing sign is an accepted feature in the Guidelines thus in compliance. The proposed sign will match.
 - The existing sign is included in the application and not grandfathered because it is being upgraded. If no changes were being made to it, it would have been grandfathered.
 - CPC as noted in their Notice of Decision objected to the back-lighting stating it did not conform with the Guidelines. Ms. Tomes could not verify the "over 90% compliance" statistic as she is not aware of where that number came from.

- Mr. Mabbott made the following final comments:
 - He is in support of this development but not the proposed new sign.
 - He disagrees with Mr. Murphy's view that this is a competition issue. They are entitled to a second sign to be located on Griffin Road.

V. DECISION

The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons.

The Board considered the relevant planning policies and guidelines related to the proposed development including the Municipal Development Plan and the Downtown Area Redevelopment Plan. The Board agrees the proposed development meets the goals and objectives of these planning documents.

The Board considered the [Land Use Bylaw](#) when making their decision, in particular, Sections 37.5.7 Freestanding Signs and 37.5.11 Back-lit Signs.

In considering the 10% variance required for the height of the signs, the Board found that 0.7 m represented a negligible addition to the overall height. The fact that the extra height was a result of adding a cornice feature to comply with the Guidelines was not inconsequential.

In considering the proposed sign for the Griffin Road frontage, the Board recognizes that the Appellant has already addressed the circulation comment provided by Municipal Enforcement and moved the location of the proposed sign further west to ensure it is not within 10 m of the stop sign. An updated site plan has already been provided.

The Board acknowledges that the piece of property on the eastern side of the Griffin Road entrance that is owned by GCPI is a uniquely shaped piece of property. The Board is of the opinion that the revised placement of the proposed sign will not unduly interfere with GCPI's ability to also place a sign at this entrance. With the Appellant re-locating the proposed sign farther west, the Board believes there is room for more than one sign in this area.

With regard to the number of allowable freestanding signs per lot, the Board accepts Administration's view that the two (2) proposed signs in this application will provide a different function than the four (4) previously approved freestanding signs for the eating establishment. As a result, the 200% variance sought is deemed to be acceptable.

In addition, the Board did not accept Mr. Mabbott's position that both of the Appellant's signs will be located on the same street frontage. The Board agrees with Administration in that the existing freestanding sign is located on the Fifth Avenue West frontage with the proposed sign on the Griffin Road frontage thus meeting the requirement of the LUB.

In considering the requested variance to reducing lumens by half during overnight hours, the Board took into account that the lumens will be permanently set to 3,000, half of the maximum allowable. While the proposal does not technically meet the requirement, the Board felt the intent of the regulation was met.

While the Board acknowledges Mr. Mabbott's belief that the current draft of the new land use bylaw would restrict their ability to also have a sign at the east entrance, this document has not received approval from Council and therefore cannot be taken under consideration.

In weighing and reviewing all the evidence, the Board found the Appellant's argument to be compelling.

For the reasons set out above, the appeal is upheld, and the decision of the Development Authority is overturned. Development Permit DP2021-177 shall be issued with the conditions attached in Appendix A.

Dated this 2nd day of February 2022

Original signed by Scott Shannon

Scott Shannon, Chairperson

Original signed by Karen Babin

Karen Babin, SDAB Clerk

An appeal of this Decision, on a question of law or jurisdiction, may be made to the Alberta Court of Appeal in accordance with section 688 of the Municipal Government Act, RSA 2000, c.M-26 within 30 days of the date of this Decision.

APPENDIX A

This development has been **approved** and is subject to the following conditions:

1. This development is classified as Two (2) Back-Lit Freestanding Signs and is a Discretionary Use in the Commercial Shopping Centre District (C-SC), on the lands legally described as Lot 2, Block 3, Plan 001 1035.
2. This development is for two (2) back-lit freestanding signs to be constructed as shown on the plans and drawings approved by the Development Authority. Any and all other signage to be back-lit on this property will require a separate Development Permit and approval prior to placement.
3. Prior to the issuance of a Development Permit, the applicant shall provide an electronic copy (PDF) of the plans, elevations and details with metric dimensions which shall include any revisions required by the Development Authority as part of the approval at the time of the decision.
4. The development shall be constructed in accordance with the plans, elevations and details approved and stamped by the Development Authority. Any changes to the design, format, location, orientation, capacity or use of any part of the development must receive the approval of the Development Authority before they may be commenced.
5. This development is approved with a variance of 200.0% to the *maximum number of freestanding signs* requirements of Section 37.5.7 c) of Land Use Bylaw 01/2004, as may be amended from time to time. The maximum number of signs shall be increased from seven (7) to eight (8).
6. This development is approved with a variance of 10% to the *maximum height of freestanding signs* requirements of Section 37.5.7 a) of Land Use Bylaw 01/2004, as may be amended from time to time. The maximum height of the freestanding signs shall be increased from 7.0 m to 7.7 m.
7. This development is approved with a variance of 100% to the clause *reducing of lumens in half during 2200hrs to 0600 hours* for back-lit sign requirements of Section 37.5.11 b) of Land Use Bylaw 01/2004, as may be amended from time to time. The back-lit signs shall be permanently reduced from 6,000 lumens to a maximum of 3,000 lumens.
8. No back-lit sign on this site shall produce more than 6,000 lumens.
9. No part of the light from a back-lit sign shall be directed upward.
10. The applicant/owner shall be responsible for the clean-up of any garbage, materials or other items that may be unsightly, or disperse beyond the boundaries of the subject property during the construction of this development.
11. This approval shall be voided if the conditions to be met prior to issuing a Development Permit have not been satisfactorily addressed within one year of the Notice of Decision date (December 20, 2021). An extension to the approval period for the Notice of Decision may only be considered by the Development Authority if a request is received in writing, along with the applicable fee, a minimum of forty (40) days before the expiry date noted above.
12. In accordance with Section 1.5.1 of Land Use Bylaw 01/2004, a Development Permit, if issued, is valid only if development commences within one year of the date of Development Permit issuance and the development is completed within two years of the date of issuance. A new Development Permit may be required unless a request for a time extension to the applicable date is received prior to its expiry.

ADVISORY NOTES:

- a) It is the responsibility of the applicant/owner to comply with all requirements of Land Use Bylaw 01/2004, other municipal regulations, and all provincial and federal legislation.
- b) All permits as required by the Alberta Building Code shall be obtained and the applicant/owner shall remain compliant with the provisions of this code at all times. All building permit applications must be affixed with the seal of a professional architect. All contractors working on

this development shall acquire a valid Cochrane Business Licence prior to the commencement of any work and shall maintain the licence for the full duration of the construction period.

- c) The applicant must determine the exact location of the existing utility lines by arranging for an in-field location with Alberta One-Call at 1-800-242-3447.
- d) It is the responsibility of the applicant to meet all conditions of approval.