

Appeal of the Chief Building Official's Decision for a Sign Variance Application for Two First Party Signs at 991 Kennedy Road

Date: October 1, 2024

To: Sign Variance Committee

From: Project Director, Business Transformation and Citywide Priorities
Toronto Building

Wards: Scarborough Centre (Ward 21)

SUMMARY

This report responds to an appeal of the decision of the Chief Building Official and Executive Director, Toronto Building ("CBO") concerning a Sign Variance application for two first party signs (the "Proposed Signs").

The Sign Variance was originally applied by BADER GROUP Inc. (the "Applicant"), on behalf of Kennedy Towers Development Inc. (the "Owner"). The Sign Variance application sought three variances, each subject to one condition, to allow for one first party electronic ground sign (the "Proposed Sign 1"), and three variances to permit one first party electronic wall sign (the "Proposed Sign 2"), described further in Attachment 1. The Applicant indicated that the Proposed Signs are intended to offer identification and information for Rama Gaming House, a business located on property municipally known as 991 Kennedy Road (the "Subject Premises").

Notice of the application for the Proposed Sign Variance was provided to the public, and the CBO conducted a written hearing in accordance with the requirements of the Sign By-law.

After conducting a review in accordance with the requirements of the Sign By-law, the CBO made a decision to refuse to grant the requested variances on the basis that the Proposed Sign Variance did not meet all of the mandatory criteria listed in section 694-30.A of the Sign By-law. Specifically, the CBO determined that the Applicant failed to establish that the Proposed Signs would be compatible with the development of the premises and surrounding area, support the Official Plan objectives for the subject premises and surrounding area, not adversely affect adjacent premises, not alter the character of the premises or surrounding area and not be contrary to the public interest. After the issuance of the CBO's decision refusing to grant the variances requested for the Proposed Signs, the Applicant filed an appeal of the CBO's decision.

As a result of the Applicant filing an appeal of the CBO's decision, the Sign Variance Committee ("SVC") is now conducting an *appel de novo*, meaning that the SVC are required to conduct an evaluation to determine whether the Applicant has demonstrated that the Proposed Signs meet all eight criteria, based on the information presented to the Sign Variance Committee. The SVC may decide to refuse or grant the variances requested by the Applicant, or to grant different variances, or impose conditions which the Applicant did not include in their application.

It is the CBO's opinion that it has not been established that the Proposed Signs would meet all eight established criteria as set out in §694-30A of the Sign By-law, and that the Sign Variance Committee should not grant the variances sought by the Applicant.

RECOMMENDATIONS

The Chief Building Official and Executive Director, Toronto Building, recommends that:

1. The Sign Variance Committee refuse to grant the requested variances sections 694-14.E, 694-15.A and 694-20.I, each subject to one condition, as required to allow for the issuance of a permit respecting the erection and display of Proposed Sign 1, as well as the requested variances to sections 694-14.E, 694-15.A and 694-20.I, as required to allow for the issuance of a permit respecting the erection and display of Proposed Sign 2, as further described in Attachment 1 to this report.

FINANCIAL IMPACT

There are no current or known future year financial impacts arising from the recommendations contained in this report.

DECISION HISTORY

FP-24-33619 (File #24-136208)

On April 15, 2024, a Sign Variance application was submitted for one electronic ground sign, illuminated, containing two sign faces, displaying electronic static copy and static copy, and for one wall sign, containing one sign face, displaying electronic static copy, as described in Attachment 1 of this report. On August 26, 2024, a decision was made that refused to grant the requested variances for the Proposed Signs on the basis that it failed on five of the eight criteria, as contained in §694-30A of the Sign By-law. The Decision Notice can be found at Attachment 4 of this report. Subsequently, the Applicant filed an appeal of the CBO's decision.

ISSUE BACKGROUND

Required Variances

Table 1: Summary of Requested Variances

Section	Requirement	Proposal
694-14.E	Signs shall display only static copy unless otherwise expressly permitted	To allow for an electronic ground sign and an electronic wall sign to display electronic static copy.
694-15.A	Anything not expressly permitted by the Chapter 694 is prohibited	Electronic wall signs and electronic ground signs are not expressly permitted in the CR - Commercial Residential Sign District.
694-20.I	First party signs shall only display static copy, topiary sign copy, or readograph copy.	The Proposed Signs would display electronic static copy.

Sign Attributes and Site Context

The Subject Premises currently houses a single-storey building, where Rama Gaming House operates. There is an existing first party ground sign, with two faces displaying static copy, each face measuring 3.66m vertically by 1.52 metres horizontally and approximately 4.27 metres in height (the "Existing Ground Sign"), which is located on the west frontage of the Subject Premises, along Kennedy Road. The Existing Ground Sign is proposed to be modified to accommodate a double-sided digital display, which would measure 2.14 metres by 1.52 metres and display electronic static copy (the "Proposed Sign 1").

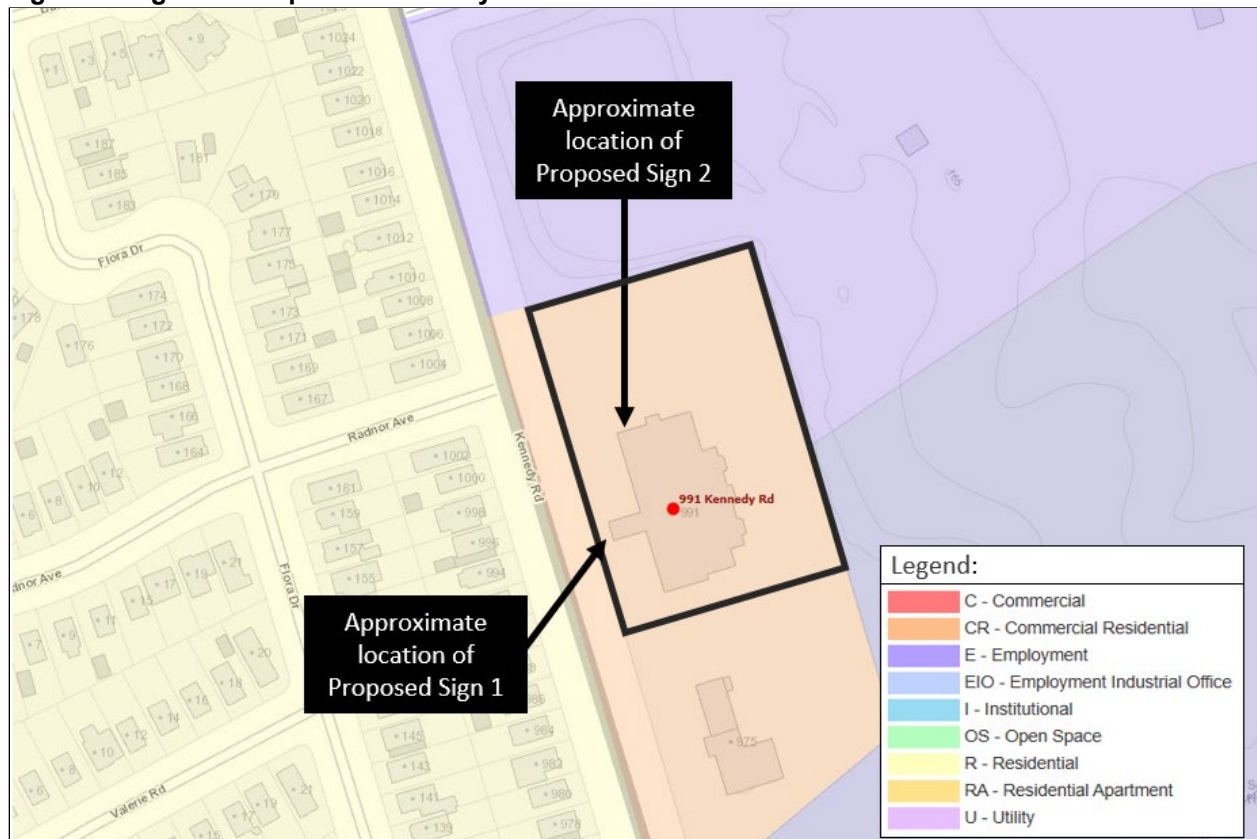
Figure 1: Renders of Proposed Sign 1 and Proposed Sign 2



The application also contains one first party electronic wall sign, which would have one sign face measuring 2.44 metres in length by 5.03 metres in width, 4.27 metres in height and would be erected on the north elevation of the building on the Subject Premises (the "Proposed Sign 2").

Staff have confirmed that the Subject Premises is designated as being entirely in a Commercial Residential Sign District (CR), located to the east of 991 Kennedy Road in Ward 21 - Scarborough Centre, see SignView Map in Figure 2.

Figure 2: SignView Map - 991 Kennedy Road



Surrounding premises:

North: Employment (E) Sign District, hydro-electric transmission station

South: Commercial Residential (CR) Sign District, single storey building housing Al-Huda Muslim Society

East: Employment (E) Sign District, hydro corridor

West: Residential (R) Sign District, low-rise single-family dwellings

COMMENTS

Appellant Information

The Applicant states that they have been authorized by the Owner of the property municipally known as 991 Kennedy Road to apply for three variances, each subject to one condition, required to allow for a permit to be issued for the erection one double-sided electronic ground sign (Proposed Sign 1) and for three variances required to allow for a permit to be issued for one electronic wall sign containing one sign face (Proposed Sign 2) and at the Subject Premises.

Criteria Established by §694-30A of The Sign By-law

The Sign By-law contains specific criteria used in evaluating Sign Variance and Signage Master Plan applications. Specifically, §694-30A states that a variance may only be granted where it has been determined that proposed sign(s) meets each of the established criteria.

When a decision regarding a first party Sign Variance or Signage Master Plan application is appealed, the Sign Variance Committee conducts an *appeal de novo*. This would require the Sign Variance Committee to conduct an evaluation to determine whether the party seeking the variance(s) has demonstrated that the proposed sign, or signs contained within a Sign Variance, meet all eight criteria established in the Sign By-law at present, based on the information presented to the Sign Variance Committee.

Applying the Established Criteria

Section 694-30A(1): The Proposed Sign belongs to a sign class permitted in the Sign District where the premises is located

The Subject Premises has been confirmed as being designated as CR-Commercial Residential Sign District, and that first party signs are permitted in CR sign districts. The CBO has also confirmed that as per information contained in the Applicant's submission, that Proposed Sign 1 and Proposed Sign 2 belong to the first party sign class, since they advertise, promote, or direct attention to businesses, goods, services, matters, or activities that are available at, or related to, the Subject Premises where the sign is located.

Therefore, the CBO is of the opinion that this criterion has been established.

Section 694-30A(2): The Proposed Sign is compatible with the development of the premises and surrounding area

The Subject Premises is designated as a CR Sign District. This sign district designation allows for ground signs and wall signs of the first party class, however it does not permit first party electronic sign types, displaying either electronic static or moving copy.

There is a single-storey commercial building on the Subject Premises. The adjacent property to south, also designated as a CR sign district, features a low-rise building occupied by Al-Huda Muslim Society. To the north and east, the immediate properties are E sign districts, housing the Hydro One Scarborough Transmission Station and several transmission towers. The premises to the west are R sign districts, comprised by single-family dwellings. The sign district designations for the Subject Premises and surrounding lands are compatible with the existing uses in the area.

Figure 3: Aerial View - Adjacent Properties Uses



The Applicant has requested variances allow for a sign type that is not expressly permitted in the CR sign district, displaying a copy type that is also not permitted.

According to the Applicant, the Proposed Sign 1 will remain in the same location as the Existing Ground Sign and will operate similarly, with a modest increase in the size of the displayed copy. The Applicant claims there would be no material impact on the surrounding area due to this change. However, changing the type of copy displayed on the Existing Ground Sign substantially alters the sign type from a ground sign to an electronic ground sign. This change means that a permitted sign type would be converted to a non-permitted sign type in the CR Sign District. Electronic signs are typically allowed in districts with non-sensitive uses, such as Employment and Commercial Sign Districts, which is not the case here. The Applicant has not explained how this prohibited sign type would be compatible with the Subject Premises, nor how two non-permitted signs would work in tandem to achieve compatibility.

The surrounding properties to the east are residential and deemed sensitive. Regarding the impact on these lands, the Applicant stated that the proponent is willing to accept

certain conditions to ensure the compatibility of the signage. These conditions include limiting the brightness of the Proposed Signs to 300 NITS and ensuring that the cumulative light emitted by both signs does not increase the light levels at a distance of 10 meters from the signs by more than 3.0 lux above the ambient lighting level. The Applicant asserts that, subject to these conditions, the Proposed Signs would be compatible with the surrounding area, addressing concerns regarding nearby residential uses.

The proposed conditions are moot, as they replicate regulations delineated in Section 694-18 of the Sign By-law. Since no variance is being sought for illumination, the Proposed Signs would be required to comply with the regulations in Section 694-18 regardless of any conditions. While conditions, where relevant, may aid in reducing the impact of signs on adjacent properties, they do not necessarily contribute on achieving compatibility with a premises and its surroundings.

Figure 4: Location of the Proposed Signs in relation to the Residential Area



The Applicant also stated that this application maintains compatibility with the development of the premises and surrounding area because of numerous electronic signs approved under similar circumstances and provided five examples in the submissions. Although existing situations may help to establish the character of an area and the compatibility of a sign, precedent is not listed as a criterion in Section 694-30A for granting or refusing a variance. Each variance application is assessed individually based on its specific context.

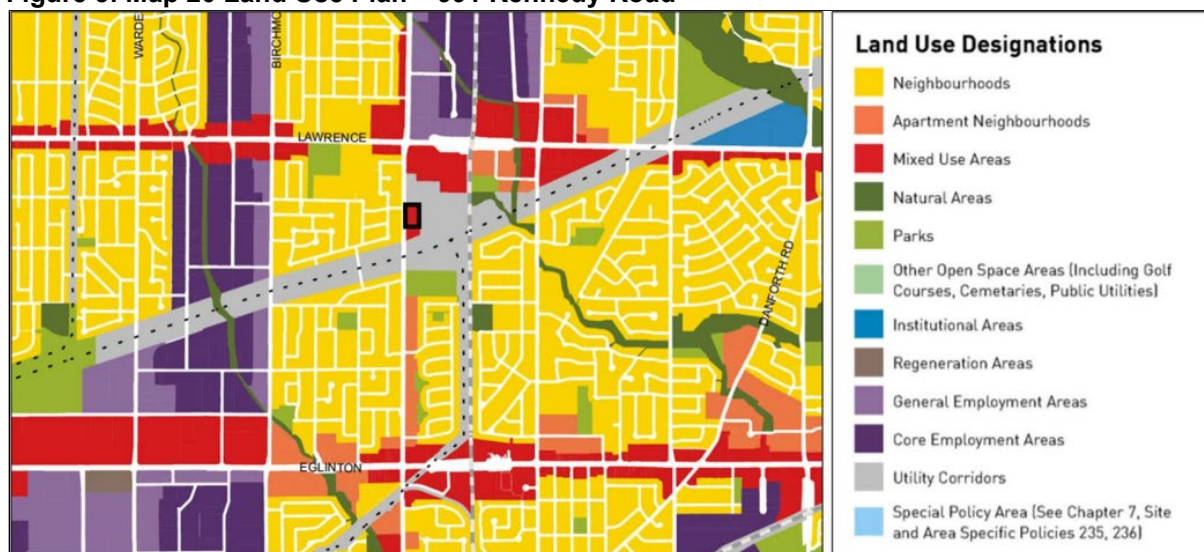
In this case, staff has reviewed the given examples and determined that they are fundamentally different from the context of the subject application: none of the cited properties are near the Subject Premises, nor are they surrounded by any R Sign Districts; only one of the five listed properties is in a CR Sign District, however, it is located in downtown Toronto, where the landscape is substantially different from that of the Subject Premises and its surroundings. Staff are of the opinion that the Applicant's submissions do not justify why this location cannot comply with the standards established for CR Sign Districts. Moreover, no evidence was provided to demonstrate how the Proposed Signs, being both non-permitted types in the CR Sign District, would be compatible with the Subject Premises and surrounding area.

Therefore, it is the CBO's opinion that sufficient information was not provided to establish that the Proposed Signs would be compatible with the development of the premises and surrounding area and that this criterion has not been met.

Section 694-30A(3): The Proposed Sign supports Official Plan objectives for the subject premises and surrounding area

The property at 991 Kennedy Road is designated as a Mixed Use Area within the Official Plan. It is surrounded by Utility Corridors to the north and east, Mixed Use to the south, and Neighbourhoods to the west (see Figure 5).

Figure 5: Map 20 Land Use Plan – 991 Kennedy Road



The Applicant's submissions address the surrounding area designated and used for utility purposes. The Applicant asserts that these uses are classified as non-sensitive, and the signage proposed in this application would therefore be compatible with, and not detract from, the planned function of the surrounding Utility Corridors. The Applicant also addresses the Mixed Use Area, stating that although these areas could allow for residential uses, there are currently no sensitive land uses and no future plans to introduce sensitive land uses.

Mixed Use Areas, such as the one where the Subject Premises is located, are areas within the city that promote a balanced and dynamic community, accommodating diverse needs by combining commercial, residential, institutional, and open space uses. By enhancing the identification of the services and activities available on the Subject Premises, the Proposed Signs could contribute to these objectives. However, it's worth noting that other signs, not requiring variances could also contribute to these objectives in a similar, if not identical, fashion.

The premises on the west side of Kennedy Road are Neighbourhood Areas. According to the Official Plan, Neighbourhoods areas are considered physically stable areas made up of residential uses in lower scale buildings, which is consistent with the current use of the area. The Applicant's supporting documents do not mention how the Proposed

Signs would be in keeping with these residential uses and support the Official Plan's objectives for the Neighbourhood Areas surrounding the Subject Premises.

It is the CBO's opinion that the Applicant's submission materials have not provided sufficient information to confirm that the Proposed Signs would support of the Official Plan objectives for the premises and the surrounding area. As such, this criterion has not been established.

Section 694-30A(4): The Proposed Sign does not adversely affect adjacent premises

The Subject Premises is located within the CR Sign District, which does not permit the sign types of the Proposed Signs.

Submissions indicate that Proposed Sign 2 cannot be viewed from any adjacent premises to the east, northeast, southeast, south, southwest, and west. Staff investigation has confirmed that, while some adjacent lands may not have a full view of the Proposed Signs, they would still be visible from residential areas. While the visibility of Proposed Sign 2 from the properties to the west may be limited, the properties to the northwest, which are also residential and considered sensitive, would have a line of sight to it.

The Applicant asserts that, with the imposed conditions, light trespass from the proposed signage is managed, however no evidence was provided to support this claim. Furthermore, the conditions mentioned in the Applicant's submissions are moot as they are simply a replication of the regulations in the Sign By-law, and as such are applicable requirements for any sign.

Submissions also indicate that, as there are no physical alterations or relocations proposed for the renovated ground sign in this application, the increase in display area of the electronic static component does not adversely affect adjacent premises. However, no evidence was provided to support this claim. As previously mentioned, the proposed modifications to the Existing Ground Sign, resulting in Proposed Sign 1, substantially alter the sign from a permitted to a non-permitted sign type in the CR Sign District. Proposed Sign 1 would be located only 17 meters from the sensitive uses in the R Sign District to the west and would be fully visible from the residences in that area.

Staff is of the opinion that the submissions do not provide sufficient evidence to demonstrate how not only one, but two non-permitted electronic signs would not have adverse effects on adjacent premises. Therefore, the CBO is of the opinion that this criterion has not been established.

Section 694-30A(5): The Proposed Sign does not adversely affect public safety, including traffic and pedestrian safety

The City's Sign By-law regulations are designed to ensure that there are no adverse impacts on public safety for signs which meet the requirements. These regulations are designed to work in conjunction with other regulations which would also apply to signs.

The current criterion is intended to ensure that variances are not granted where they would result in signs that would have adverse impacts on public safety.

The Sign By-law has requirements for signs not to be within a "Visibility Zone" – defined as the area within three metres of the outermost points of a vehicular ingress or egress of a property where it intersects with a street. The Proposed Signs would be situated entirely outside this prohibited zone for signs.

The City has existing regulations to adequately address the potential for adverse traffic safety (set back from intersections, distance from street lines, and pedestrian triangles) impacts for all signs, including signs displaying electronic copy. The Applicant's submission documents indicated, and staff investigation confirmed, that the Proposed Signs would meet all clearances and setbacks as required in the Sign By-law. While the Proposed Sign 1 would be located in proximity to sidewalks and roadways, it is the CBO's opinion that it would not be situated in proximity to sidewalks, roadways in a manner that could create impact on pedestrian or traffic safety.

Based on the available information with respect to the Proposed Signs, the requested deviations from the mandatory requirements of the Sign By-law, and the proposed location within the Subject Premises, City staff are of the opinion that there is no reasonable basis for any concern regarding public safety arising from the Proposed Signs, provided that they are designed and installed in accordance with the requirements of the Ontario Building Code.

Therefore, the CBO is of the opinion that this criterion has been established.

Section 694-30A(6): The Proposed Sign is not a sign prohibited by §694-15B

According to staff review, the Applicant's documents and drawings contains sufficient information to confirm that Proposed Signs do not meet the description of any of the signs which are specifically prohibited by §694-15B.

As such, the CBO is of the opinion that this criterion has been established.

Section 694-30A(7): The Proposed Sign does not alter the character of the premises or surrounding area

The materials submitted by the Applicant, along with the investigation conducted by City staff, confirm that the Proposed Signs are situated within a CR Sign District. Variances are required to permit the erection and display of an electronic ground sign featuring both static and electronic copy, as well as an electronic wall sign displaying electronic static copy. Since electronic copy is not a permitted copy type in CR Sign Districts, none of the Proposed Signs would be allowed under the current regulations.

The Applicant's Submissions discuss the compatibility of electronic sign types with the hydro transmission uses in the surrounding lands, arguing that because electronic signs are permitted in U and E sign districts, the Proposed Signs would not alter the character

of the area. However, there is no explanation of how two signs displaying a copy type not permitted in the sign district would harmonize with the character of the Subject Premises and of the adjacent residential area to the west.

There are no electronic signs in the vicinity that resemble the Proposed Signs. The Applicant has not successfully demonstrated how two electronic signs, which are not permitted in the CR Sign District and are not in keeping with any other signage in the area, would not alter the character of the surrounding area.

Given these considerations, the CBO believes that the Applicant has not provided sufficient information to determine that the Proposed Signs would not alter the character of the premises and surrounding area. Therefore, the CBO concludes that this criterion has not been established.

Section: 694-30A(8): The Proposed Sign is not contrary to the public interest

The application is seeking three variances, each subject to one condition, were sought to permit the erection and display of Proposed Sign 1, an electronic ground sign featuring both static and electronic copy, as well as three variances to allow for the erection and display of Proposed Sign 2, an electronic wall sign, with one face displaying electronic static copy.

The submissions assert that the changes to the Existing Ground Sign to accommodate the electronic display, resulting in Proposed Sign 1, would be minimal. However, staff's review has determined that these modifications would significantly alter the sign from a permitted to a non-permitted sign type in the CR Sign District. This is a substantial change. Additionally, the proposal includes Proposed Sign 2, an electronic wall sign, which is also prohibited in CR Sign Districts. Upon review of the submissions, staff concluded that the supporting documents failed to provide sufficient evidence demonstrating how the Proposed Signs, both being non-permitted sign types in the CR Sign District, would be compatible with the development of the Subject Premises, either individually or combined.

The Subject Premises is surrounded by CR, E, and R Sign Districts, with the latter being deemed sensitive. The Applicant argued that electronic sign types are compatible with the utility and employment uses of surrounding lands and stated that the Subject Premises itself does not contain any sensitive uses. Although staff agree that the impacts on the non-residential adjacent lands should be minimal, no evidence was provided in the submissions to ensure that the Proposed Signs would be compatible with and not have adverse effects on the nearby residential area. The submissions also have not sufficiently demonstrated how two electronic signs, which are not permitted in the CR Sign District and do not align with any other signage in the area, would not detract from the character of the surrounding area.

Consequently, in the CBO's opinion, the Applicant has failed to establish the Proposed Signs will not be contrary to the public interest, and this criterion has not been met.

CONCLUSION

The Applicant's materials, even supplemented by and Staff's research and investigation, have not provided sufficient information for the CBO to establish that all eight criteria required to grant an approval for the requested variances have been met.

As such, the CBO is not supportive of the Sign Variance Committee granting the requested variances.

CONTACT

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SIGNATURE

Ted Van Vliet
Project Director, Business Transformation and Citywide Priorities
Toronto Building

ATTACHMENTS

Attachment 1 – Description of Signs Variance
Attachment 2 – Appeal Submission Package
Attachment 3 – Sign Variance Submission Package
Attachment 4 – CBO's Decision Notice