

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
September 19, 2018**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I 9:00 A.M. SDAB-D-18-504

To construct an exterior alteration (Rooftop Terrace) to an existing Single Detached House
9843 – 86 Avenue NW
Project No.: 267804471-013

II 1:30 P.M. SDAB-D-18-149

To change the Use from General Retail Stores to Cannabis Retail Sales
8204 - 104 Street NW
Project No.: 286525142-001

NOTE: *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-18-504

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 267804471-013

APPLICATION TO: Construct an exterior alteration (Rooftop Terrace) to an existing Single Detached House

DECISION OF THE DEVELOPMENT AUTHORITY: N/A

DECISION DATE: N/A

DATE OF APPEAL: August 27, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9843 – 86 Avenue NW

LEGAL DESCRIPTION: Plan I7 Blk 93 Lot 34

ZONE: (RF2) Low Density Infill Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: Strathcona Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

Have not received a decision from the Development Authority within 40 days of the application. Slow responses: unsatisfactory/un-fact based responses.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Development applications

683.1(1) A development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.

(2) An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(a).

(4) If the development authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a development authority determines that the application is complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the development authority determines that the application is incomplete, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the development authority in order for the application to be considered complete.

(7) If the development authority determines that the information and documents submitted under subsection (6) are complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the development authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the development authority may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

(11) If the development authority refuses the application for a development permit, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reasons for the refusal.

Development Appeals

Permit deemed refused

684(1) The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgment under section 683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(b).

(2) A time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority.

(3) If the development authority does not make a decision referred to in subsection (1) within the time required under subsection (1) or (2), the application is, at the option of the applicant, deemed to be refused.

(4) Section 640(5) does not apply in the case of an application that was deemed to be refused under section 683.1(8).

Grounds for appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires, [...]

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 120.2(7), **Single Detached Housing** is a **Permitted Use** in the (RF2) Low Density Infill Zone.

Under section 7.2(8), **Single Detached Housing** means:

development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Under section 6.1, **Rooftop Terrace** means:

an elevated structure intended for use as an outdoor Amenity Area that may be surrounded by guardrails, parapet walls or similar features, and is located above:

- a. the uppermost Habitable Room;
- b. the uppermost Commercial Floor Area intended for occupancy;
or
- c. in the case of an Accessory building other than a Garden Suite, any roof.

This definition does not include a Platform Structure.

Section 120.1 states that the **General Purpose** of the (RF2) **Low Density Infill Zone** is “to retain Single Detached Housing, while allowing infill on narrow lots, and Secondary Suites and Garden Suites.”

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is to:

to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations..

Previous Subdivision and Development Appeal Board Decisions

Application Number	Description	Decision
SDAB-D-18-070	To construct a Single Detached House with Basement development (NOT to be used as an additional Dwelling), fireplace, rear uncovered deck (under 0.6 m in height), Unenclosed Front Porch.	July 5, 2018; The Board does not assume jurisdiction.
SDAB-D-17-105	To construct a Single Detached House with a veranda, Rooftop Terrace with Privacy Screening, fireplace, rear uncovered deck (under 0.6m in height), Secondary Suite in the Basement, and to demolish the existing Single Detached House and Accessory Building (rear detached Garage).	June 29, 2017; The appeal is denied and the decision of the Development Authority is Confirmed. Court of Appeal File Number 1703-0186-AC: April 19, 2018; The Applicant/Appellant, Rebecca Bell, discontinues the action against the Respondents, City of Edmonton Subdivision and Development Appeal Board and the City of Edmonton.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.



Application for Minor Development Permit

Project Number: **267804471-013**
 Application Date: APR 09, 2018
 Printed: August 27, 2018 at 3:54 PM
 Page: 1 of 1

This document is an application for a Development Permit for the development described below.

Applicant	Property Address(es) and Legal Description(s) 9843 - 86 AVENUE NW Plan I7 Blk 93 Lot 34 Specific Address(es) Entryway: 9843 - 86 AVENUE NW Building: 9843 - 86 AVENUE NW
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Scope of Application
 To construct an exterior alteration (Rooftop Terrace) to an existing Single Detached House.

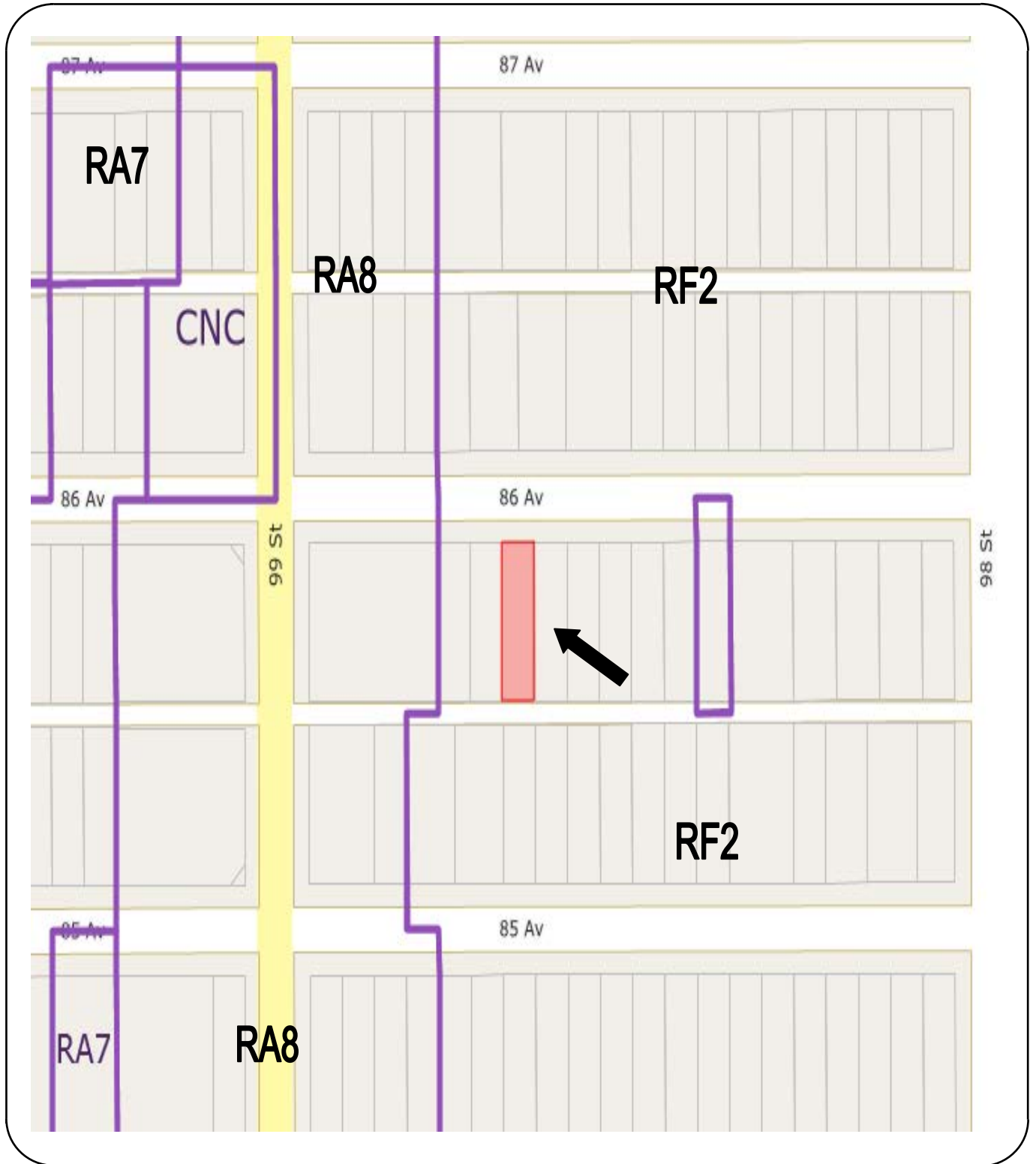
Permit Details # of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Exterior Alterations (Res.) Secondary Suite Included?: N	Class of Permit: Lot Grading Needed?: New Sewer Service Required: Y Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay
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I/We certify that the above noted details are correct.
 Applicant signature: _____

Development Application Decision
 No decision has yet been made.
Issue Date: Jul 31, 2018 **Development Authority:** ROBINSON, GEORGE

Fees	Fee Amount	Amount Paid	Receipt #	Date Paid
Existing Without Permit Penalty Fee	\$170.00	\$170.00	04934596	Apr 12, 2018
Dev. Application Fee	\$170.00	\$170.00	04934362	Apr 12, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$340.00	\$340.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-504



ITEM II: 1:30 P.M.

FILE: SDAB-D-18-149

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 286525142-001

APPLICATION TO: Change the Use from General Retail Stores to Cannabis Retail Sales

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: August 14, 2018

DATE OF APPEAL: August 23, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8204 - 104 Street NW

LEGAL DESCRIPTION: Plan I Blk 67 Lots 1-4

ZONE: DC1 Direct Development Control Provision (Historical Commercial)

OVERLAY: N/A

STATUTORY PLAN: Strathcona Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

My name is Sara Doran (2127959 Alberta Ltd.) and I have applied for my Cannabis Retail Store license through the City of Edmonton. The location of my application is 10408 82 Avenue. On August 14, 2018, my application was refused by the Development Permit office by officer Imai Welch based on zoning bylaws in relation to the Old Strathcona Library and the Gazebo Park. I am appealing this decision based on the following grounds:

1)The location of the proposed development is on Whyte Avenue near 104 Street on one of Edmonton’s most urban and urbane high-density retail shopping streets and entertainment districts where all manner of goods and services are sold;

2)The applicant, Sara Doran, is an experienced manager of a very popular retail store called Jupiter. I have been the manager of Jupiter for 15 years and I have a very large customer base developed over many years;

3)The location of Jupiter has been in business on Whyte Avenue for 27 years;

4)The proposed development enjoys wide support from area merchants;

5)The proposed development enjoys wide support from established clientele;

6)Given the character of Whyte Avenue and its context within Old Strathcona, the separation distances applicable to retail cannabis dispensaries should be applied with a degree of flexibility in recognition of the area's special urban quality. The Development Officer did not enjoy the discretion to waive or vary the separation distances contained in the Zoning Bylaw, however, the SDAB does enjoy the discretion to waive or vary the separation distances on a case by case basis in consideration of contextual and other factors; and the Applicant, Sara Doran, respectfully requests that the SDAB exercise its discretion in this case to approve the proposed development.

Thank you most kindly for your time and consideration,
Sara Doran (2127959 Alberta Ltd.)

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, [...]

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

- (a) ...
- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 4(f) of the **DC1 (Historical Commercial) Direct Development Control Provision** (the “DC1”), **Cannabis Retail Stores** is a **Listed Use**.

Under section 7.4(9), **Cannabis Retail Stores** means:

development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use may include retail sales of Cannabis accessories. This Use does not include Cannabis Production and Distribution.

Under section 6.1, **Cannabis** means:

a cannabis plant and anything referred to in subsection (a) of this definition but does not include anything referred to in subsection (b) of this definition:

- a. Cannabis includes:

- i. any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in subsection (b) of this definition.
 - ii. any substance or mixture of substances that contains or has on it any part of such a plant;
 - iii. any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.
- b. Notwithstanding subsection (a) of this definition, Cannabis does not include:
- i. a non-viable seed of a cannabis plant;
 - ii. a mature stalk, without any leaf, flower, seed or branch, of such plant;
 - iii. fibre derived from a stalk referred in subsection (b)(ii) of this definition; and
 - iv. the root or any part of the root of such a plant.

Under section 7.8(12), **Public Libraries** and Cultural Exhibits means:

development for the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public Use; or a development for the collection, preservation and public exhibition of works or objects of historical, scientific or artistic value. Typical Uses include libraries, museums and public, not-for-profit art galleries.

Under section 7.8(13), **Public Park** means:

development of public land specifically designed or reserved for the general public for active or passive recreational Use and includes all natural and man-made Landscaping, facilities, playing fields, buildings and other structures that are consistent with the general purposes of public parkland, whether or not such recreational facilities are publicly operated or operated by other organizations pursuant to arrangements with the public authority owning the park. Typical Uses include tot lots, band shells, picnic grounds, pedestrian trails and paths, landscaped buffers, playgrounds and water features.

Under section 6.1, **Site** means “an area of land consisting of one or more abutting Lots.”

Section 3 of the **DC1** states that the **Rationale** of this **Provision** is intended to:

- a) apply detailed and sensitive control of development and redevelopment within the core historic commercial area of Strathcona;
- b) encourage a highly pedestrian, retail commercial environment with offices and others Uses on the upper floors;
- c) emphasize and retain the original, historic architectural and urban design characteristics of this area in future renovations and redevelopments; and
- d) provide detailed control over specific Sites, which are or may be in future designated as historic resources under the Alberta Historical Resources Act, in an area which is used for primarily commercial purposes.

<p><i>Section 70 - Cannabis Retail Sales regulations</i></p>

1. Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 200 m separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
 - b. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11; and
 - c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)b shall be issued as a Class B Discretionary Development.
2. Any Site containing a Cannabis Retail Sales shall not be located less than 200 m from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 200 m separation distance shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;

- d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.
6. The Development Officer shall impose a condition on any Development Permit issued for Cannabis Retail Sales requiring that the development:
 - a. shall not commence until authorized by and compliant with superior legislation; and
 - b. must commence within nine (9) months of the date of approval of the Development Permit.
7. For the purposes of Section 70(6), development commences when the Cannabis Retail Sales Use is established or begins operation.

Development Officer's Determination

1) The proposed Cannabis Retail Sales does not comply with the minimum setback requirement from a public library (Section 70.2):

**Required Setback: 200 m
Proposed Setback: 123 m
Deficient by 77 m**


2) The proposed Cannabis Retail Sales does not comply with the minimum setback requirement from public lands (Dr. William McIntyre Park) (Section 70.3):

**Required Setback: 100 m
Proposed Setback: 75 m
Deficient by 25 m**

Under Section 70.4 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Sales. [unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	Project Number: 286525142-001 Application Date: JUL 03, 2018 Printed: August 14, 2018 at 4:43 PM Page: 1 of 2		
<h2 style="margin: 0;">Application for Major Development Permit</h2>			
This document is a Development Permit Decision for the development application described below.			
Applicant	Property Address(es) and Legal Description(s) 8204 - 104 STREET NW Plan I Blk 67 Lots 1-4 Specific Address(es) Suite: 10408 - 82 AVENUE NW Entryway: 10408 - 82 AVENUE NW Building: 8204 - 104 STREET NW		
Scope of Application To change the use from General Retail Stores to a Cannabis Retail Sales.			
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): </td> <td style="width: 50%; border: none; vertical-align: top;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)		
I/We certify that the above noted details are correct. Applicant signature: _____			
Development Application Decision Refused Issue Date: Aug 14, 2018 Development Authority: WELCH, IMAI Reason for Refusal 1) The proposed Cannabis Retail Sales does not comply with the minimum setback requirement from a public library (Section 70.2): : Required Setback: 200 m Proposed Setback: 123 m Deficient by 77 m 2) The proposed Cannabis Retail Sales does not comply with the minimum setback requirement from public lands (Dr. William McIntyre Park) (Section 70.3): Required Setback: 100 m Proposed Setback: 75 m Deficient by 25 m Under Section 70.4 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Sales. Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.			
Fees			
THIS IS NOT A PERMIT			



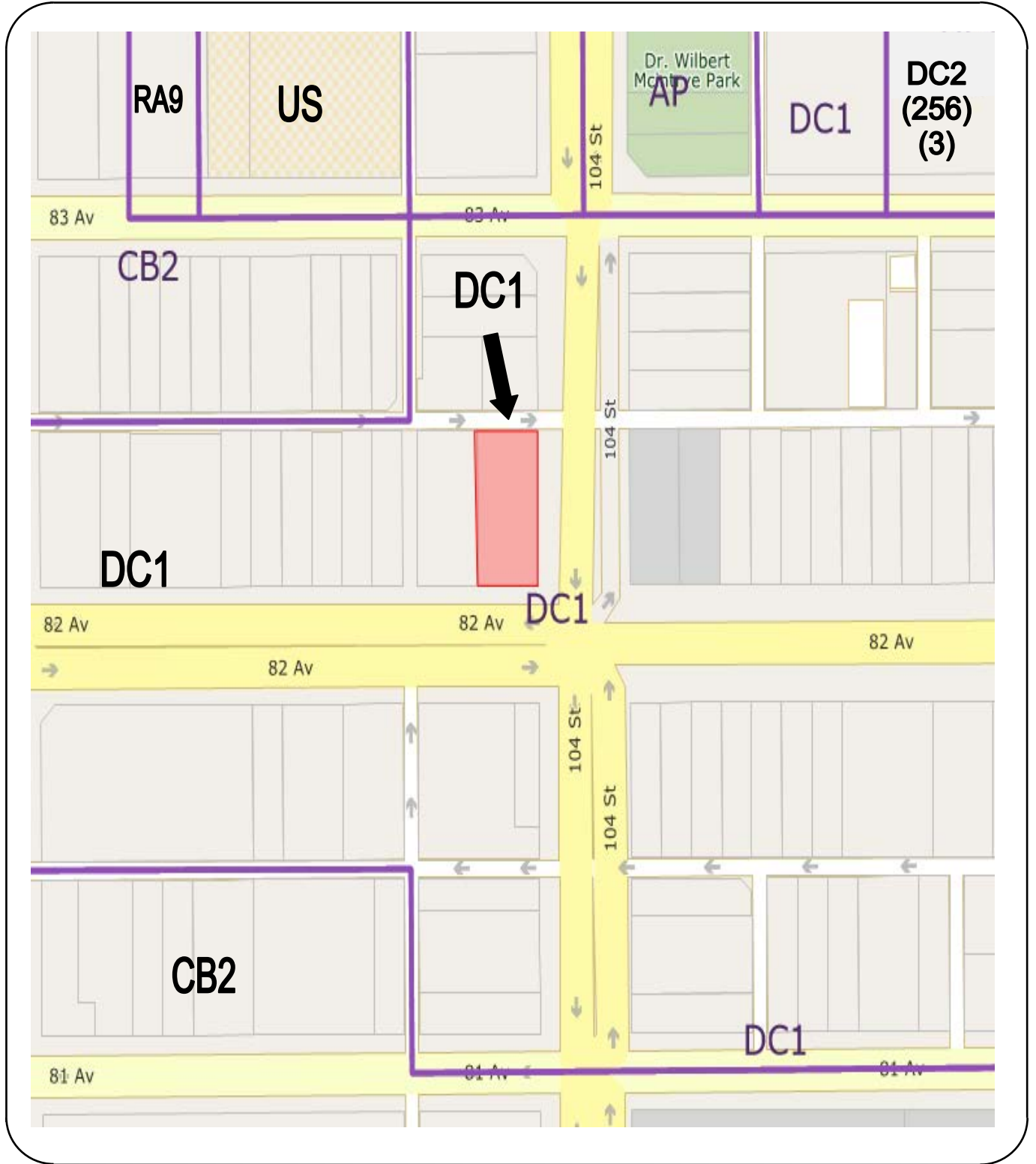
Application for Major Development Permit

Project Number: **286525142-001**
Application Date: JUL 03, 2018
Printed: August 14, 2018 at 4:43 PM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$5,600.00	\$5,600.00	05153251	Jul 03, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$5,600.00</u>	<u>\$5,600.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-149

