

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Thursday, 9:00 A.M.  
November 14, 2019**

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

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

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**TO BE RAISED**

I 9:00 A.M. SDAB-D-19-178

**WITHDRAWN**

To change the Use from a Limited Contract  
Services Use to a Cannabis Retail Sales and to  
construct interior alterations

8203 - 127 Avenue NW  
Project No.: 324487918-001

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

**TO BE RAISED**  
**ITEM I: 9:00 A.M.**

FILE: SDAB-D-19-178

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 324487918-001

APPLICATION TO: Change the Use from a Limited Contract Services Use to a Cannabis Retail Sales and to construct interior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 4, 2019

DATE OF APPEAL: September 23, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8203 - 127 Avenue NW

LEGAL DESCRIPTION: Plan 3409MC Blk 60A Lot 1

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: CN Intermodal Facility Area Area Redevelopment Plan

**WITHDRAWN**

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***Grounds for Appeal***

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

Please be advised that we are counsel for 2205336 Alberta Ltd. operating as Elevate Cannabis ("Elevate").

Notice of Appeal

Pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 as amended (the "MGA") Elevate hereby appeals the decision of the City of Edmonton (the "City") which refused to grant a Major Development Permit identified as Permit #324487918-001(the "Permit Application") to change the Use from a Limited Contract Services use to a Cannabis Retail Sales use and to construct interior alterations. A copy of the Permit Application is enclosed [Tab 1].

As you can note from reviewing the Permit Application, Elevate was seeking a Major Development Permit in relation to property legally described as Plan 3409MC; Block 60A; Lot 1 and municipally described as 8209 - 127 Avenue (the "Property"). The Property is owned by PHL and has been partially leased to Elevate. A copy of a Land Title Certificate for the Property along with correspondence from PHL to Elevate is enclosed [Tab2].

The Property in question is zoned as low intensity business zone (CB1) under Edmonton Zoning By-law 12800 [Tab 3]. Pursuant to section 330.2 of Edmonton Zoning By-law 12800, cannabis retail sales are a permitted use for property zoned as CB1 [Tab 4].

Enclosed for your convenience, are copies of the following:

1. A picture of the front of the proposed business taken from 127 Avenue [Tab 5];
2. A schematic of the Elevate Site Plan located on the corner of 127 Avenue and 82 Street [Tab 6]; and
3. Google Earth photographs of the proposed Elevate location and the proposed cannabis retail store located 174 metres away from the Elevate store [Tab 7].

#### Refusal to Grant Permit

The City refused to grant the Major Development Permit on September 4, 2019. The reason for the refusal is that the proposed cannabis retail store does not comply with the minimum setback requirement from another proposed cannabis retail store use. The required setback is 200 metres whereas the proposed setback is 174 metres. Thus, a 26 metre variance to the minimum setback is required in order for the Major Development Permit to be granted. Unfortunately, the Development Officer, Stephen Chow, is prohibited from granting a variance to the minimum setback to allow for the proposed cannabis retail store.

#### Grounds for Appeal

Elevate submits that there are meritorious reasons for the Subdivision and Development Appeal Board (the "SDAB") to grant a variance to the minimum setback requirement of 200 metres from another cannabis retail store to allow the proposed development to proceed. The grounds include, *inter a/ia*, the following:

1. Section 687(3)(d) of the MGA gives the SDAB the jurisdiction to grant a variance to the required separation distance. Section 687(3)(d) of the MGA states:
  - (3) In determining an appeal, the subdivision and development appeal board
  - (d) may make an order, decision or confirm the issue of a development permit even though the proposed development does not comply with the land use by-law 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 the neighbourhood parcels of land;

and

ii. The proposed development conforms with the use prescribed for the land or building in the Land Use By-law.

2. The proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of the neighbourhood parcels of land.;
3. Elevate intends to install a state-of-the-art security system exceeding all requirements and designed to deter crime including 24/7 video surveillance, panic buttons at each cash till, 24-hour live monitoring as well as a quick response system in the event of emergency;
4. All staff will be trained and familiar with the relevant AGLC rules and regulations;
5. All inventory that is not on the active retail sales floor will be kept in a secure storage room in accordance with AGLC guidelines;
6. Elevate is focused on ensuring that the sale of cannabis products is managed properly and safely utilizing only quality cannabis products;
7. The two proposed developments are separated by a fence and a small grove of trees and do not share a common parking lot;
8. There is ample parking available to customers of Elevate;
9. Strict application of the set-off requirement would lead to an undue hardship for Elevate and would capriciously favour one business owner over another simply because the former was fortuitous enough to have applied for a Development Permit shortly before Elevate;
10. The other cannabis retail store has not been constructed and it is unknown whether the first development will operate as a long term, viable business;
11. The Property is located in a predominately commercial/industrial area (CB1) away from schools, daycares, playgrounds, health care facilities or any other area predominately used by minors;
12. Operating a retail cannabis store is a permitted use for the Property;

13. 127 Avenue is a major thoroughfare in North Edmonton and experiences significant vehicular and pedestrian traffic. There is more than enough sufficient customer volume to accommodate both cannabis retail stores;
14. The next closest cannabis retail store is Alternative Greens located a fair distance away at 12451 - 97 Street;
15. The location of two cannabis retail stores along a busy thoroughfare will benefit the local community through retail attraction, market competition and product choice;
16. The two properties are not visible to each other;
17. Signage will be designed to be discreet;
18. The walking distance between the two stores is greater than 200 metres;
19. The variance would only represent a 26 metre variance equivalent to a 13% variance of the setback requirement; and

Such further and other grounds as may be submitted at the hearing of this Appeal

<i>General Matters</i>
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**Appeal Information:**

**The Subdivision and Development Appeal Board made and passed the following motion on October 17, 2019:**

**"That the appeal hearing be scheduled for November 14, 2019, at the written request of the Appellant."**

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, [...]

### **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 330.2(3), **Cannabis Retail Sales** is a **Permitted Use** in the **(CB1) Low Intensity Business Zone**.

Under section 7.4(9), **Cannabis Retail Sales** 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 6.1, **Site** means “an area of land consisting of one or more abutting Lots.”

Section 330.1 states that the **General Purpose** of the **(CB1) Low Intensity Business Zone** is:

to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

Section 819.1 states that the **General Purpose** of the **Main Streets Overlay** is:

to encourage and strengthen the pedestrian-oriented character of Edmonton’s main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

***Section 70 – Cannabis Retail Sales***

**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 Cannabis Retail Sales shall not be located less than:**

- a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales; and
- b. 100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.

**3. For the purposes of subsection 2:**

- a. separation distances 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;

- b. the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials and learning resources in the form of books, electronic files, computers, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.
  - c. the term “community recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and
  - d. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.
4. Subsection 105(3) of the Gaming, Liquor and Cannabis *Regulation*, is expressly varied by the following:
- a. any Site containing a Cannabis Retail Sales shall not be located less than:

***Public or private education***

- i. 200 m from a Site being used for public or private education, at the time of the application for the Development Permit for the Cannabis Retail Sales;

***Provincial health care facility***

- ii. 100 m from a Site being used for a provincial health care facility at the time of the application for the Development Permit for the Cannabis Retail Sales; and

***School reserve or municipal and school reserve***

- iii. 100 m from a Site designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales.

***Measurement of Separation Distances***

- b. For the purposes of this subsection, separation distances 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.

***Sites Greater than Two Hectares***

- c. For Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:

- i. Subsection 70(2), and 70(4)(a) shall not apply; and
    - ii. the distances referred to in Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 m.
  - d. For the purposes of subsection 70(4)(a)(i), the term "public or private education" means a school as defined in subsection (1)(y)(i) and (1)(y)(ii) of the *School Act (as amended from time to time)*.
5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

### **Design Requirements**

6. Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
- a. customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
  - b. the exterior of all stores shall have ample transparency from the street;
  - c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
  - d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

### **Development Officer's Determination**

**The proposed Cannabis Retail Store does not comply with the minimum setback requirement from another Cannabis Retail Sales use (70.1(b)):**

**Required Setback: 200 m**

**Proposed Setback: 174 m**

**Deficient by 26 m**


**Under Sections 70.1(b) and 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 Store.**  
[unedited]

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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.

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	Project Number: <b>324487918-001</b> Application Date: JUL 04, 2019 Printed: September 23, 2019 at 11:34 AM 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.											
<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 8203 - 127 AVENUE NW Plan 3409MC Blk 60A Lot 1  <b>Specific Address(es)</b> Suite: 8209 - 127 AVENUE NW Entryway: 8209 - 127 AVENUE NW Building: 8203 - 127 AVENUE NW										
<b>Scope of Application</b> To Change the Use from a Limited Contract Services use to a Cannabis Retail Sales and to construct interior alterations.											
<b>Permit Details</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     Class of Permit:                      Gross Floor Area (sq.m.):                      New Sewer Service Required:                      Site Area (sq. m.):                 </td> <td style="width: 50%; border: none;">                     Contact Person:                      Lot Grading Needed?: N                      NumberOfMainFloorDwellings:                      Stat. Plan Overlay/Annex Area: Main Street Overlay                 </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Main Street Overlay								
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I/We certify that the above noted details are correct.  Applicant signature: _____											
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Sep 04, 2019 <b>Development Authority:</b> Chow, Stephen  <b>Reason for Refusal</b> The proposed Cannabis Retail Store does not comply with the minimum setback requirement from another Cannabis Retail Sales use (70.1(b)):  Required Setback: 200 m Proposed Setback: 174 m Deficient by 26 m  Under Sections 70.1(b) and 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 Store.  <b>Rights of Appeal</b> 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.											
<b>Fees</b> <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: center;">Fee Amount</th> <th style="text-align: center;">Amount Paid</th> <th style="text-align: center;">Receipt #</th> <th style="text-align: center;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: center;">\$5,600.00</td> <td style="text-align: center;">\$5,600.00</td> <td style="text-align: center;">06020335</td> <td style="text-align: center;">Jul 26, 2019</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$5,600.00	\$5,600.00	06020335	Jul 26, 2019
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Major Dev. Application Fee	\$5,600.00	\$5,600.00	06020335	Jul 26, 2019							
<b>THIS IS NOT A PERMIT</b>											



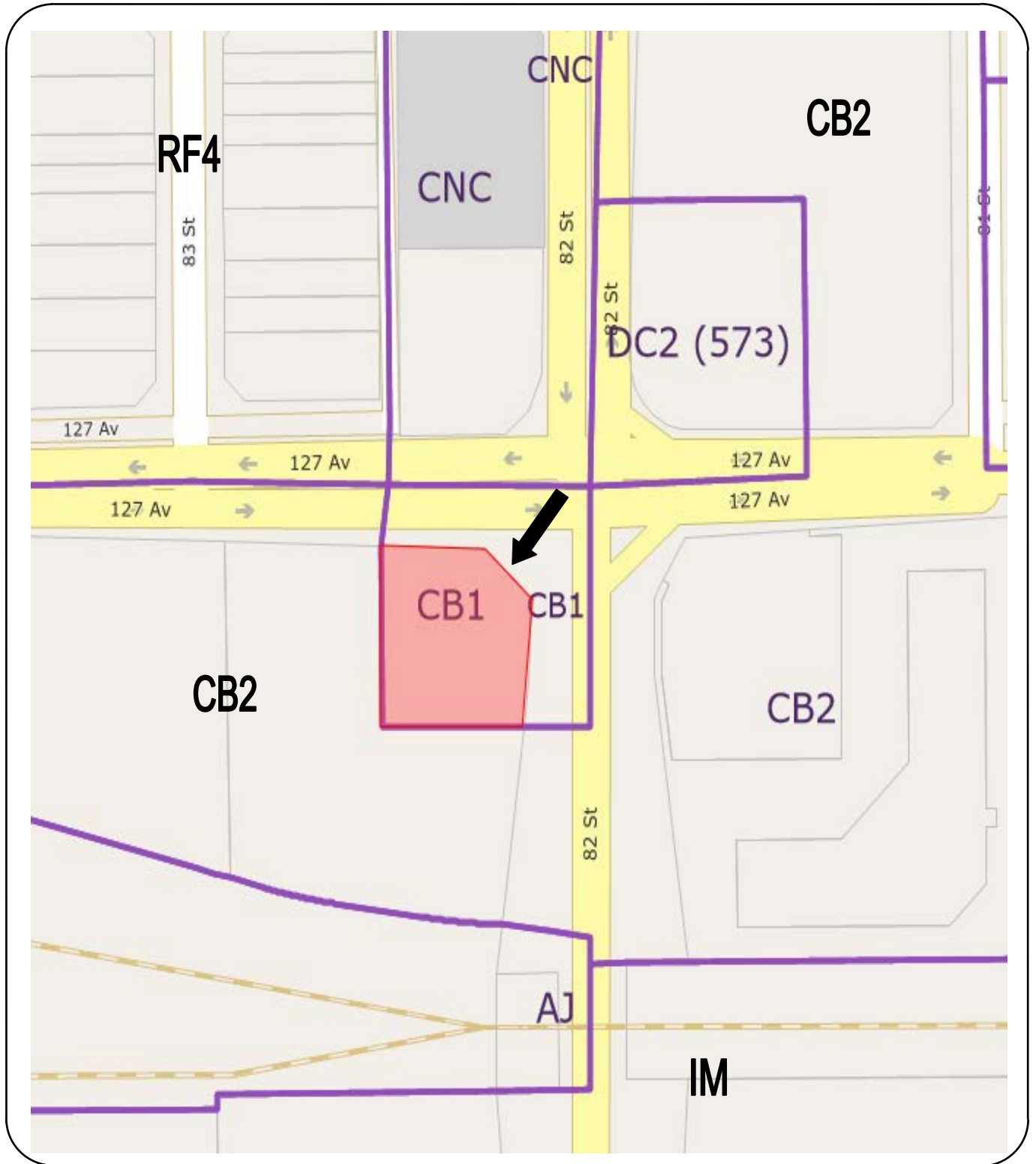
## Application for Major Development Permit

Project Number: **324487918-001**  
Application Date: JUL 04, 2019  
Printed: September 23, 2019 at 11:34 AM  
Page: 2 of 2

**Fees**

	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
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-19-178

