

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Wednesday, 9:00 A.M.  
April 10, 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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I	9:00 A.M.	SDAB-D-19-049	Change the Use of a Single Detached House to a Professional, Financial, and Office Support Service and to construct exterior alterations (Revise the approved Parking Layout)  9724 - 110 Street NW Project No.: 091238443-004
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II	10:30 A.M.	SDAB-S-19-001	Create one (1) additional Single Detached Residential Lot.  9411 - 65 Avenue NW Project No.: 301692417-001
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III	1:30 P.M.	SDAB-D-19-050	Change the Use from Health Services to Major Alcohol Sales, and to construct interior alterations (Wine and Beyond).  11904 - 104 Avenue NW Project No.: 303461903-001

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**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-19-049

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 091238443-004

APPLICATION TO: Change the Use of a Single Detached House to a Professional, Financial, and Office Support Service and to construct exterior alterations (Revise the approved Parking Layout)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: February 25, 2019

DATE OF APPEAL: March 15, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9724 - 110 Street NW

LEGAL DESCRIPTION: Plan NB Blk 10 Lot 82

ZONE: (RA9) High Rise Apartment Zone

OVERLAY: N/A

STATUTORY PLAN: Oliver Area Redevelopment Plan

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***Grounds for Appeal***

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

1. Terragold Projects Inc. is a Construction company providing the services of “Design-Décor-Build” owned and operated by a veteran, Commander Ravinder Gill (Retired).
2. The subject property 9724 – 110 Street is owned by Commander Ravinder Gill (Retired) and his wife Darshan Gill.
3. The property is zoned RA9 (High Rise Apartment Zone) which has “Professional, Financial and Office Support Services” as a permitted Use.

4. An application for major Development Permit, project Number 91238443-004 dated January 2, 2019, “To change the use of a single detached house to a Professional, Financial, and Office Support Service and to construct exterior alterations (revise the approved parking layout)” was refused on February 24, 2019.
5. Ravinder Gill, by his email dated February 21, 2019 to the City Planner reviewing this permit (Mr. Paul Adams), conveyed his desire to proceed ahead with his application despite the refusal.
6. The Senior Engineer Subdivision Planning form the Transport Department by the “Urban Form and Corporate Strategic Development File number DA-455 dated February 14, 2019” has approved the revision of the rear parking from the existing eight (8) stalls to twelve (12) stalls, subject to successfully appealing to the Subdivision and Development Appeal board.
7. The Oliver ARP strongly supports the retention of older single family housing by converting their use to low impact commercial use, redevelop the site in a manner to allow sunlight to penetrate, to provide on-site parking as there is insufficient on-street parking, conversion of older housing stock where such housing is isolated between apartment buildings or non-resident use.
8. A large number of older single family housing in Oliver is already being used for low impact commercial activity. Photographs of randomly selected housing being used as commercial offices in Oliver are attached as examples.
9. A copy of the Site Plan showing the layout of the approved parking by the Transport Department and the internal layout of the office is placed along with this document.
10. The Honorable members of the Subdivision and Development Appeal Board are requested to kindly approve the use of 9724 – 110 Street as a Professional, Financial and office Support Service for Terragold Projects Inc.

<i>General Matters</i>
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**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, [...]

### **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*:**

Section 230.2(9) states **Professional, Financial and Office Support Services** is a **Permitted Use** in the **(RA9) High Rise Apartment Zone**.

Under Section 7.4(44), **Professional, Financial and Office Support Services** means development primarily used for the provision of professional, management, administrative, consulting, and financial services, but does not include Health Services or Government Services. Typical Uses include: the offices of lawyers, accountants, engineers, and architects; offices for real estate and insurance firms; clerical, secretarial, employment, telephone answering, and similar office support services; and banks, credit unions, loan offices and similar financial Uses.

Section 230.1 states the **General Purpose** of the **(RA9) High Rise Apartment Zone** is to develop high rise residential apartments that contain active residential or non-residential frontages at ground level. This Zone is intended to allow supportive non-residential uses that complement the primary residential uses, and improve the pedestrian experience at ground level. Design regulations are included in the Zone to manage impacts that tall buildings can have in relation to shadow, wind, parking, context, massing and interface at ground level.

***Non-residential Uses***

Section 230.7(1) states Non-residential Uses, excluding Residential-Related Uses

- a. shall only be developed in conjunction with Apartment Housing or Group Homes.
- b. the combined Floor Area shall not exceed 32 percent of the overall Floor Area for the Site, and shall not exceed 47 percent of the Floor Area that is developed as Apartment Housing, Lodging Houses or Group Homes.
- c. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 230.7(1)(a) or 230.7(1)(b).

**Development Officer's Determination**

1. Non-residential Uses... shall only be developed in conjunction with Apartment Housing or Group Homes. (Reference Section 230.7.1.a)

The proposed development is to change the use from a Single Detached House to a Professional, Financial, and Office Support Service (a non-residential Use), contrary to Section 230.7.1.a. [unedited]

2. The combined Floor Area (of non-residential Uses) shall not exceed 32 percent of the overall Floor Area for the Site, and shall not exceed 47 percent of the Floor Area that is developed as Apartment Housing, Lodging Houses or Group Homes. (Reference Section 230.7.1.b)

The development proposes that 100% of the Floor Area will be dedicated to a Professional, Financial, and Office Support Service (a non-residential Use), contrary to Section 230.7.1.b. [unedited]

***Floor Area***

Section 230.7(10) states Professional, Financial and Office Support Services shall be limited to 15 percent of total Floor Area for the Site.

**Development Officer's Determination**

3. Professional, Financial and Office Support Services shall be limited to 15 percent of total Floor Area for the Site. (Reference Section 230.7.10)

The development proposes that 100% of the Floor Area be dedicated to a Professional, Financial, and Office Support Service, contrary to Section 230.7.10. [unedited]

***Height***

Section 230.5(1)(h) states for non-residential Uses, excluding residential-related Uses, on ground level, the ground Storey shall have a minimum Height of 4.0 metres.

**Development Officer's Determination**

4. For non-residential Uses, excluding residential-related Uses, on ground level, the ground Storey shall have a minimum Height of 4.0 m. (Reference Section 230.5.1.h)

The development proposes an existing ground Storey of 2.7m high, contrary to Section 230.5.1.h. [unedited]

***Loading Spaces***

Section 54.4, Schedule 3, states the following:

<b>Use of Building or Site</b>	<b>Total Floor Area of Building</b>	<b>Minimum Number of loading Spaces Required</b>
1. Any development within the Commercial or Industrial Use Classes, excluding Professional, Financial and Office Support Services	Less than <u>465 m<sup>2</sup></u> <u>465 m<sup>2</sup> to 2 300 m<sup>2</sup></u> Each additional <u>2 300 m<sup>2</sup></u> , or fraction thereof	1 2 1 additional
2. Any development within the Residential-Related, Basic Services or Community, Educational, Recreational and Cultural Service Use Classes and Professional, Financial and Office Support Services, excluding Limited Group Homes	Up to <u>2 800 m<sup>2</sup></u> Each additional <u>2 800 m<sup>2</sup></u> or fraction thereof	1 1 additional

**Development Officer's Determination**

5. Loading Spaces are required as per section 54.4 Schedule 3(2):

Required: 1 Loading Space

Provided: 0 Loading Spaces

Deficiency: 1 Loading space [unedited]



***Previous Subdivision and Development Appeal Board Decision***


<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
SDAB-D-10-058	To convert a Single Detached House to a Professional, Financial, and Office Support Service Use, and to construct interior alterations	March 12, 2010; that the appeal be DENIED and the decision of the Development Authority CONFIRMED with conditions

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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>91238443-004</b> Application Date: JAN 02, 2019 Printed: February 25, 2019 at 2:54 PM Page: 1 of 2		
<h2 style="margin: 0;">Application for Major Development Permit</h2>			
<p>This document is a Development Permit Decision for the development application described below.</p>			
<b>Applicant</b> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	<b>Property Address(es) and Legal Description(s)</b> 9724 - 110 STREET NW Plan NB Blk 10 Lot 82  <b>Specific Address(es)</b> Suite: 9724 - 110 STREET NW Entryway: 9724 - 110 STREET NW		
<b>Scope of Application</b> To change the use of a Single Detached House to a Professional, Financial, and Office Support Service and to construct exterior alterations (Revise the approved Parking Layout).			
<b>Permit Details</b> <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.): 698.12         </td> <td style="width: 50%; border: none; vertical-align: top;">           Contact Person:            Lot Grading Needed?: Y            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.): 698.12	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 698.12	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)		
<p>I/We certify that the above noted details are correct.</p> <p>Applicant signature: _____</p>			
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Feb 25, 2019 <b>Development Authority:</b> ADAMS, PAUL			
<b>THIS IS NOT A PERMIT</b>			



Project Number: **91238443-004**  
 Application Date: JAN 02, 2019  
 Printed: February 25, 2019 at 2:54 PM  
 Page: 2 of 2

## Application for Major Development Permit

**Reason for Refusal**

1. Non-residential Uses... shall only be developed in conjunction with Apartment Housing or Group Homes. (Reference Section 230.7.1.a)

The proposed development is to change the use from a Single Detached House to a Professional, Financial, and Office Support Service (a non-residential Use), contrary to Section 230.7.1.a.

2. The combined Floor Area (of non-residential Uses) shall not exceed 32 percent of the overall Floor Area for the Site, and shall not exceed 47 percent of the Floor Area that is developed as Apartment Housing, Lodging Houses or Group Homes. (Reference Section 230.7.1.b)

The development proposes that 100% of the Floor Area will be dedicated to a Professional, Financial, and Office Support Service (a non-residential Use), contrary to Section 230.7.1.b.

3. Professional, Financial and Office Support Services shall be limited to 15 percent of total Floor Area for the Site. (Reference Section 230.7.10)

The development proposes that 100% of the Floor Area be dedicated to a Professional, Financial, and Office Support Service, contrary to Section 230.7.10.

4. For non-residential Uses, excluding residential-related Uses, on ground level, the ground Storey shall have a minimum Height of 4.0 m. (Reference Section 230.5.1.h)

The development proposes an existing ground Storey of 2.7m high, contrary to Section 230.5.1.h.

5. Loading Spaces are required as per section 54.4 Schedule 3(2):

Required: 1 Loading Space  
 Provided: 0 Loading Spaces  
 Deficiency: 1 Loading space

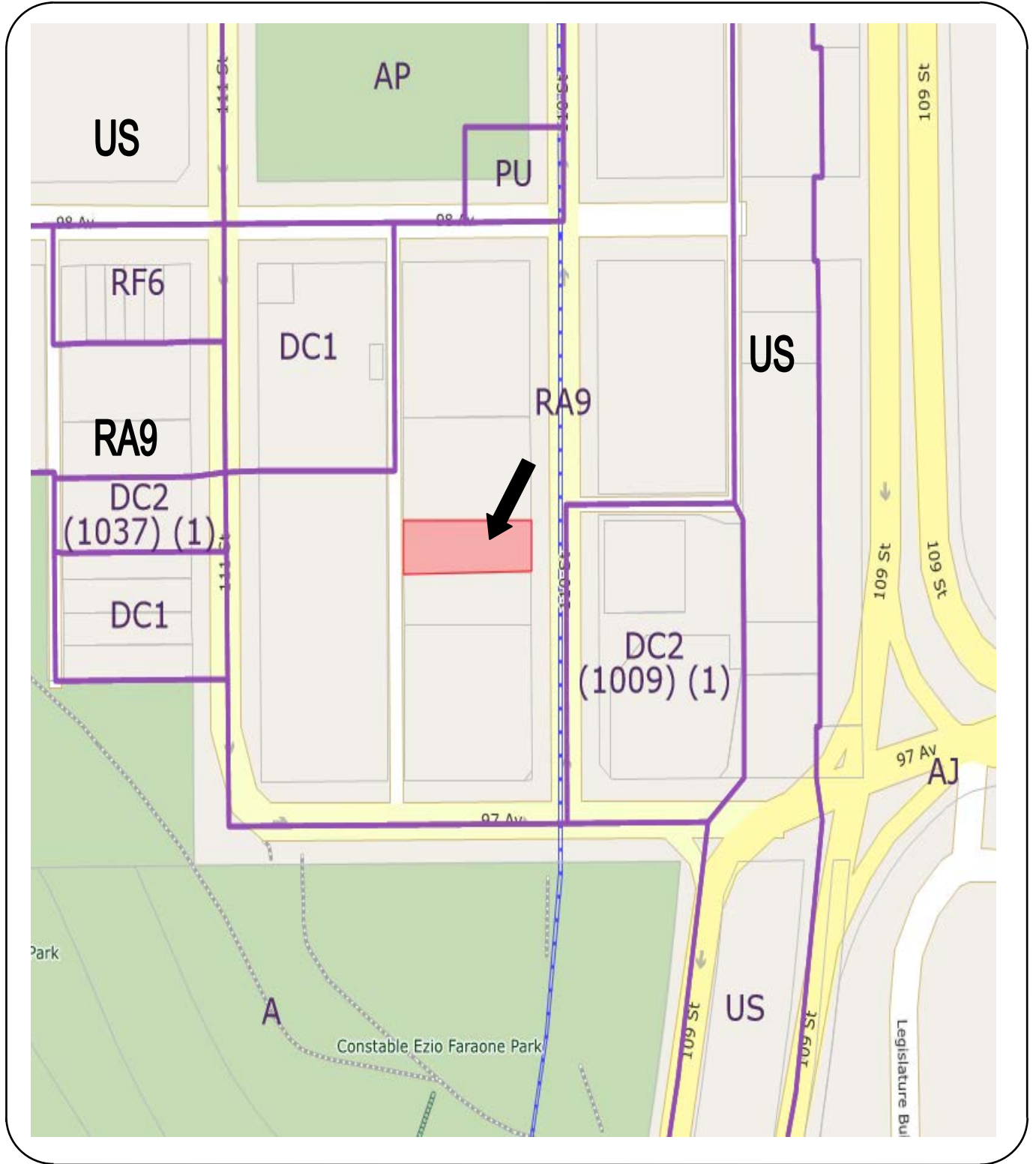
**Rights of Appeal**

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**

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$368.00	\$368.00	05568234	Jan 02, 2019
Development Permit Inspection Fee	\$518.00			
Lot Grading Fee	\$236.00			
Total GST Amount:	\$0.00			
Totals for Permit:	\$1,122.00	\$368.00		
(\$754.00 outstanding)				

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-19-049



ITEM II: 10:30 A.M.

FILE: SDAB-S-19-001

AN APPEAL FROM THE DECISION OF THE SUBIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 301692417-001

APPLICATION TO: Create one (1) additional Single Detached Residential Lot

DECISION OF THE SUBDIVISION AUTHORITY: Refused

DECISION DATE: February 28, 2019

DATE OF APPEAL: March 18, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9411 - 65 Avenue NW

LEGAL DESCRIPTION: Plan 6045HW Blk 13 Lot 45

ZONE: (RF1) Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

***Grounds for Appeal***

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

I am aware that the frontage is insufficient, however, the pie shape allows for a much larger rear width of 11.63 m. I was also informed by a subdivision officer that the setback for frontage measurement was 4.5 m not the 3 m in your refusal letter. The neighbouring houses are set back further than my existing structure. If I use that setback, I achieve the width. My lot is longer than average so a setback will not affect the footprint. Also, because of the pie shape, a more interesting and pleasing build can be done rather than the rectangular box and larger garages w/parking pads can be supplied. Because of the pie shape, I believe this is a rare opportunity to built 2 interesting houses.

***General Matters***

**Appeal Information:**

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

**Appeals**

**678(1)** The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
  - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
  - (ii) the location of school reserve allocated to it, or
  - (iii) the amount of school reserve or money in place of the reserve.

**(2)** An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Municipal Government Board
  - (i) if the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the Public Lands Act,
  - (ii) if the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, or
  - (iii) in any other circumstances described in the regulations under section 694(1)(h.2),

or

- (b) in all other cases, with the subdivision and development appeal board.

**(2.1)** Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

**(3)** For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

**(4)** A notice of appeal under this section must contain

- (a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- (b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

**(5)** If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

#### **Hearing and decision**

**680(1)** The board hearing an appeal under section 678 is not required to hear from any person or entity other than

- (a) a person or entity that was notified pursuant to section 679(1), and
- (b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

**(1.1)** For the purposes of subsection (1), “adjacent land” and “owner” have the same meanings as in section 653.

**(2)** In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;

- (a.1) must have regard to any statutory plan;
- (b) must conform with the uses of land referred to in a land use bylaw;
- (c) must be consistent with the land use policies;
- (d) must have regard to but is not bound by the subdivision and development regulations;
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

**Approval of application**

**654(1)** A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
- (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

**(1.1)** Repealed 2018 c11 s13.

**(1.2)** If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.



(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

- (a) the proposed subdivision would not
  - (i) unduly interfere with the amenities of the neighbourhood, or
  - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

**General Provisions from the *Edmonton Zoning Bylaw*:**

Section 110.4(1) states:

Site regulations for Single Detached Housing:

- a. the minimum Site area shall be 250.8 m<sup>2</sup>
- b. the minimum Site Width shall be 7.5 m; and
- c. the minimum Site depth shall be 30.0 m.

Under section 110.4(8) states:

The minimum Front Setback shall be 4.5 m, except that:

- a. the minimum Front Setback shall be 3.0 m when a Treed Landscaped Boulevard is provided at the front of the Lot and vehicular access is from a Lane; and
- b. ....

Section 11.4(1) states the follow with respect to *Limitation of Variance*:

In approving a Development Permit Application pursuant to Section 11.3, the Development Officer shall adhere to the following:

...

- c. on rectangular shaped Lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1, RF2, RF3, and RF4 Zones for all Sites which received subdivision approval after June 12, 2017; and

...

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

Under section 6.1, **Site Width** means “the horizontal distance between the side boundaries of the Site measured at a distance from the Front Lot Line equal to the required Front Setback for the Zone.”

Section 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is:

to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing.

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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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Subdivision Authority

7th Floor, Edmonton Tower  
10111 – 104 Avenue NW  
Edmonton, Alberta T5J 0J4

February 28, 2019

File No. LDA19-0012

RE: Tentative plan of subdivision to create one (1) additional single detached residential lot from Lot 45, Block 13, Plan 6045 HW, located south of 65 Avenue NW and west of 94 Street NW;  
**HAZELDEAN**

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**The Subdivision by Plan is REFUSED on February 28, 2019 for the following reasons:**

1. The proposed subdivision does not comply with the minimum development regulation identified in Section 110.4(1)(b) of the City of Edmonton Zoning Bylaw 12800. The site is zoned (RF1) Single Detached Residential Zone. The minimum site width identified in the (RF1) Single Detached Residential Zone for single detached housing is 7.50 metres. The site width of the proposed lots is 6.76 metres, measured 3.0 metres from the front property line in accordance with Section 110.4(8)(a) of the City of Edmonton Zoning Bylaw 12800, and is therefore deficient by 0.74 metres or 9.9%.
2. The proposed subdivision will create two non-conforming lots that do not meet the site width development regulation in the City of Edmonton Zoning Bylaw 12800. This situation will create unnecessary hardship for existing and future landowners. Landowners wishing to further develop or redevelop their site will require a Development Permit variance.

Please be advised that an appeal may be lodged in accordance to Section 678 of the Municipal Government Act with the Subdivision and Development Appeal Board, 10019 – 103 Avenue NW, Edmonton, Alberta, T5J 0G9, within 14 days from the date of the receipt of this decision. The date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed.

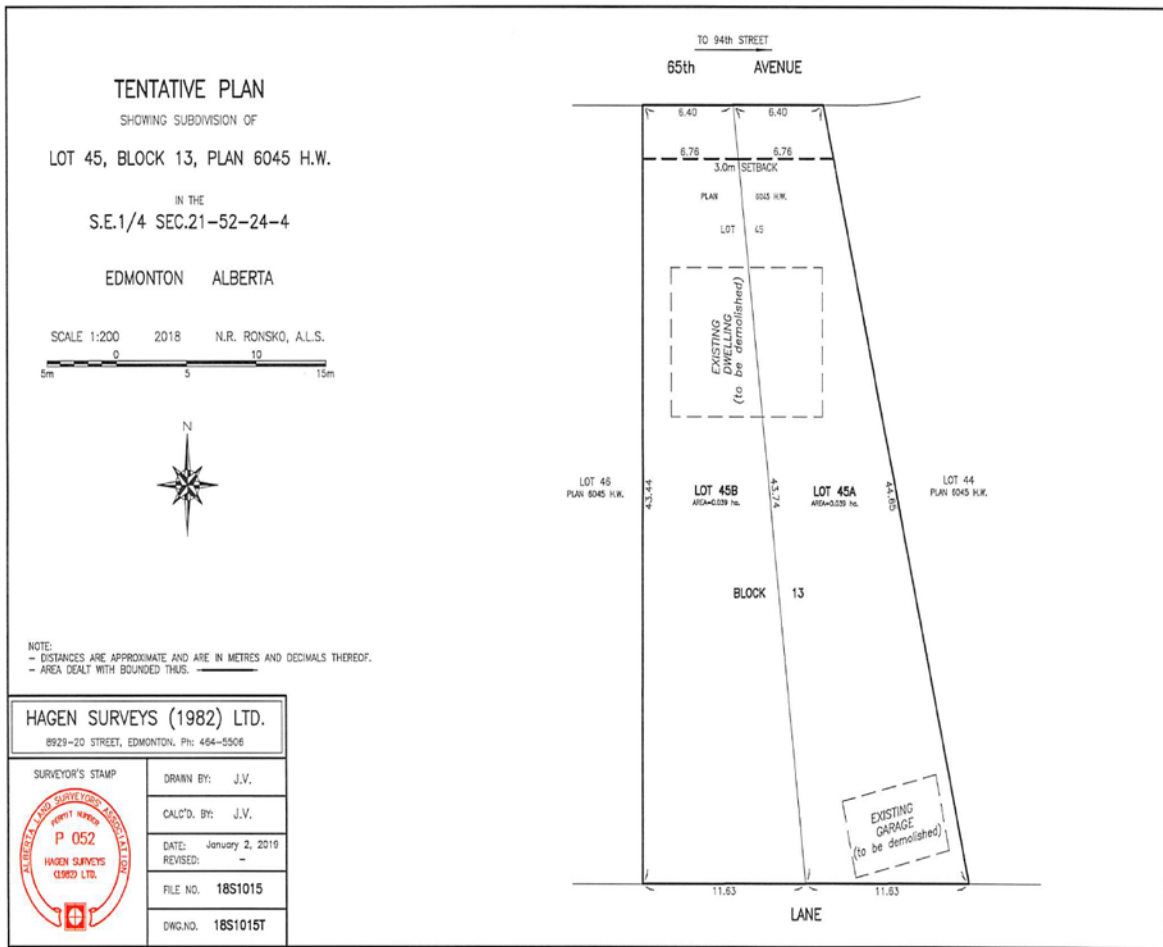
If you have further questions, please contact Christian Schmitt at 780-944-0459 or christian.schmitt@edmonton.ca.

Regards,

Blair McDowell  
Subdivision Authority

BM/cs/Posse #301692417-001

Enclosure





**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-S-19-001



ITEM III: 1:30 P.M.

FILE: SDAB-D-19-050

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 303461903-001

APPLICATION TO: Change the Use from Health Services to Major Alcohol Sales, and to construct interior alterations (Wine and Beyond)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: March 1, 2019

DATE OF APPEAL: March 19, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11904 - 104 Avenue NW

LEGAL DESCRIPTION: Plan 1425753 Blk 21 Lot 2

ZONE: DC1 Direct Development Control Provision (Bylaw 18099 – Area 1)

OVERLAY: N/A

STATUTORY PLAN: 104 Avenue Corridor Area Redevelopment Plan

***Grounds for Appeal***

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

1. The proposed store is in replacement for one already existing in the adjacent Centre.
2. The proposed store will not impact negatively on neighbouring lands nor on the amenities of the neighbourhood.
3. Such further and other reasons as may be raised at the hearing of the Appeal.

***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 DCI (Bylaw 18099 – Area 1) Direct Development Control Provision (“DCI”):**

Under section 3.s, **Major Alcohol Sales** is a **listed Use** in the **DC1**.

Section 1 states that the **General Purpose** of the **DC1** is:

to facilitate development of a pedestrian friendly and transit-supportive area that is characterized by its strong mix of retail, office, entertainment, and residential uses and its accessibility, open spaces, and sensitive interface between developments.

**General Provisions from the *Edmonton Zoning Bylaw*:**

Under section 7.4(30), **Major Alcohol Sales** means:

development used for the retail sales of any and all types of alcoholic beverages to the public where the Floor Area for the individual business premises is greater than 275 m<sup>2</sup>. This Use may include retail sales of related products such as soft drinks and snack foods.

***Schedule 85 – Major Alcohol Sales and Minor Alcohol Sales***

1. **Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.**
2. Notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales if all the following regulations are met:
  - a. the Major Alcohol Sales or Minor Alcohol Sales are located on separate Sites;
  - b. the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85; and
  - c. at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.
3. For the purposes of Section 85, the 500 m separation distance shall be measured from the closest point of the Major Alcohol Sales or Minor Alcohol Sales Use to the closest point of any other approved Major Alcohol Sales or Minor Alcohol Sales Use.



4. Any Site containing a Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 100 m from any Site being used for community or recreation activities, public or private education, or public lands at the time of the application for the Development Permit for the Major Alcohol Sales or Minor Alcohol Sales. Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, are exempt from this restriction. For the purposes of this subsection only:
  - a. the 100 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;
  - b. the term "community or recreation activities" is limited to Community Recreation Services, as defined in subsection 7.8(1) of this Bylaw, which includes community league buildings and facilities, and children's playgrounds and play areas. This term does not include arenas or other public assembly Uses, Child Care Services, Public Libraries and Cultural Exhibits, or Religious Assembly;
  - c. the term "public or private education facilities" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools; and
  - d. the term "public lands" is limited to Sites zoned AP, and active recreation areas in the North Saskatchewan River Valley and Ravine System, as shown in Appendix I of Section 811 of this Bylaw, that are zoned A; it does not include passive areas in the North Saskatchewan River Valley and Ravine System, as shown in Appendix I of Section 811 of this Bylaw and other areas zoned A.
5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 85(4).
6. Notwithstanding Section 11 of this Bylaw, a Development Officer shall only grant a variance to subsection 85(1) or subsection 85(2) as outlined in subsections 85(7), 85(8) and 85(9).
7. When the Development Officer receives an application for a Development Permit that is for the purpose of accommodating the temporary relocation of an approved Major Alcohol Sales or Minor Alcohol Sales within 500 m of its original location, a variance to subsection 85(1) or subsection 85(2) may be granted where:

- a. the application for the Development Permit is for a Temporary Development, in order to limit the introduction of an additional Major Alcohol Sales or Minor Alcohol Sales within 500 m of the original approved Development Permit;
  - b. the temporary location for any Major Alcohol Sales or Minor Alcohol Sales is not within 500 m of any legally conforming Major Alcohol Sales or Minor Alcohol Sales;
  - c. the application for a Development Permit will not result in a total Floor Area for a Major Alcohol Sales or Minor Alcohol Sales that is 10.0% greater than the Floor Area of the existing approved Major Alcohol Sales or Minor Alcohol Sales, to a maximum increase of 50 m<sup>2</sup>; and
  - d. the application for a Development Permit will not result in a change of Use from Minor Alcohol Sales to Major Alcohol Sales.
8. When a Development Officer receives an application for a Development Permit that is for the purpose of accommodating the reversion of an existing approved Major Alcohol Sales or Minor Alcohol Sales back to its original location on a Site, a variance of subsection 85(1) or subsection 85(2) may only be granted where the application for the reversion is submitted to the Development Officer within 5 years of the date of vacating the original location and the application will not result in a total Floor Area that is greater than the original approved Major Alcohol Sales or Minor Alcohol Sales. And
  9. The issuance of a Development Permit which contains a variance pursuant to subsection 85(7) shall be issued as a Temporary Development for a duration of up to 5 years or less, to be determined by the Development Officer.
  10. The Development Officer may require lighting, signage or screening measures that ensure the proposed development is compatible with adjacent or nearby Residential Uses or Commercial Uses.
  11. The Development Officer may require that a Traffic Impact Study be conducted for Major Alcohol Sales prior to the issuance of a Development Permit, if it appears that traffic volumes or vehicular turnover may create a significant negative impact on surrounding development. The Traffic Impact Study shall be prepared to the satisfaction of the Development Officer, in consultation with Transportation Services.
  12. The Development Officer shall consider Crime Prevention Through Environmental Design criteria by ensuring:

- a. the exterior of all stores have ample transparency from the street to allow natural surveillance;
- b. exterior lighting should be in accordance with the minimum safety standards prescribed by the Illuminating Engineers Society of North America;
- c. Landscaping be low-growing shrubs or deciduous trees with a high canopy at maturity and that all foliage be kept trimmed back to prevent loss of natural surveillance;
- d. no customer parking is located behind a building and that all Parking Areas in front of the building be well-lit; and
- e. customer access to the store is limited to a store front that is visible from the street, other than a Lane, shopping centre parking lot or a mall access that allows visibility from the interior.

**Development Officer's Determination**

**Section 85.1 - Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.**


**The proposed location of the Minor Alcohol Sales is located within 500 m from an existing approved Minor Alcohol Sales location. The proposed location does not meet the criteria outlined in Section 85 to allow a variance to this regulation. [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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	<h2 style="margin: 0;">Application for Major Development Permit</h2>	Project Number: <b>303461903-001</b> Application Date: JAN 24, 2019 Printed: March 19, 2019 at 4:10 PM Page: 1 of 1																				
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> 11904 - 104 AVENUE NW Plan 1425753 Blk 21 Lot 2																					
	<b>Specific Address(es)</b> Suite: 101A, 11962 - 104 AVENUE NW Entryway: 11962 - 104 AVENUE NW Building: 11962 - 104 AVENUE NW																					
<b>Scope of Application</b> To change the Use from Health Services to Major Alcohol Sales, and to construct interior alterations. (Wine and Beyond)																						
<b>Permit Details</b>																						
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: _____																						
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Mar 01, 2019 <b>Development Authority:</b> KIM, JENNIFER  <b>Reason for Refusal</b> Section 85.1 - Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.  The proposed location of the Minor Alcohol Sales is located within 500 m from an existing approved Minor Alcohol Sales location. The proposed location does not meet the criteria outlined in Section 85 to allow a variance to this regulation.  <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-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: right;">Receipt #</th> <th style="text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: right;">\$281.00</td> <td style="text-align: right;">\$281.00</td> <td style="text-align: right;">05609520</td> <td style="text-align: right;">Jan 25, 2019</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$281.00</td> <td style="text-align: right; border-top: 1px solid black;">\$281.00</td> <td></td> <td></td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$281.00	\$281.00	05609520	Jan 25, 2019	Total GST Amount:	\$0.00				Totals for Permit:	\$281.00	\$281.00		
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