

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
April 11, 2019**

**Hearing Room No. 7
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 7**

I 9:00 A.M. SDAB-D-19-052

Construct exterior alterations to a Single Detached House (pergola on the Rooftop Terrace)

9922 - 148 Street NW
Project No.: 300759704-001

TO BE RAISED

II 10:30 A.M. SDAB-D-19-039

Construct an extension to an existing Uncovered Deck (new size: 4.22 metres by 8.57 metres), existing without permits

1746 – Tanager Close NW
Project No.: 243625660-004

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-19-052

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 300759704-001

APPLICATION TO: Construct exterior alterations to a Single Detached House (pergola on the Rooftop Terrace)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: March 12, 2019

DATE OF APPEAL: March 13, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9922 - 148 Street NW

LEGAL DESCRIPTION: Plan 4590W Blk 78 Lot 5

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:

- We don't believe the pergola should be included in the height calculations as it's not interior spaces or closed in. It is also not any higher than the existing rooftop access on the house.
- The main reasons the homeowners would like the pergola are:
- For privacy from the 4 storey condo on the west side of 149 street NW that looks directly on to their rooftop terrace.
- For shade from the sun
- We don't believe the pergola causes any hardship for any of the neighbours. If anything, it is beneficial as it gives them more privacy while in their amenity space from anyone on the rooftop terrace.

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, [...]

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 110.2(7) states **Single Detached Housing** is a **Permitted Use** in the **(RF1) Single Detached Residential 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 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.”

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

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.

Height

Section 814.3(5) states “The maximum Height shall not exceed 8.9 m.”

Under section 6.1, **Height** means “a vertical distance between two points.”

Development Officer’s Determination

Height - The maximum height is 10.6m instead of 8.9m (Section 814.3.5). [unedited]

Community Consultation

Section 814.5(1) states the following with respect to Proposed Variances:

When the Development Officer receives a Development Permit Application for a new principal building, or a new Garden Suite that does not comply with any regulation contained within this Overlay, or receives a Development Permit for alterations to an existing structure that require a variance to Section 814.3(1), 814.3(3), 814.3(5) and 814.3(9) of this Overlay:

- a. the Development Officer shall send notice, to the recipient parties specified in Table 814.5(2), to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;


- b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been sent, unless the Development Officer receives feedback from the specified affected parties in accordance with Table 814.5(2); and
- c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to approve the Development Permit Application in accordance with Sections 11.3 and 11.4.

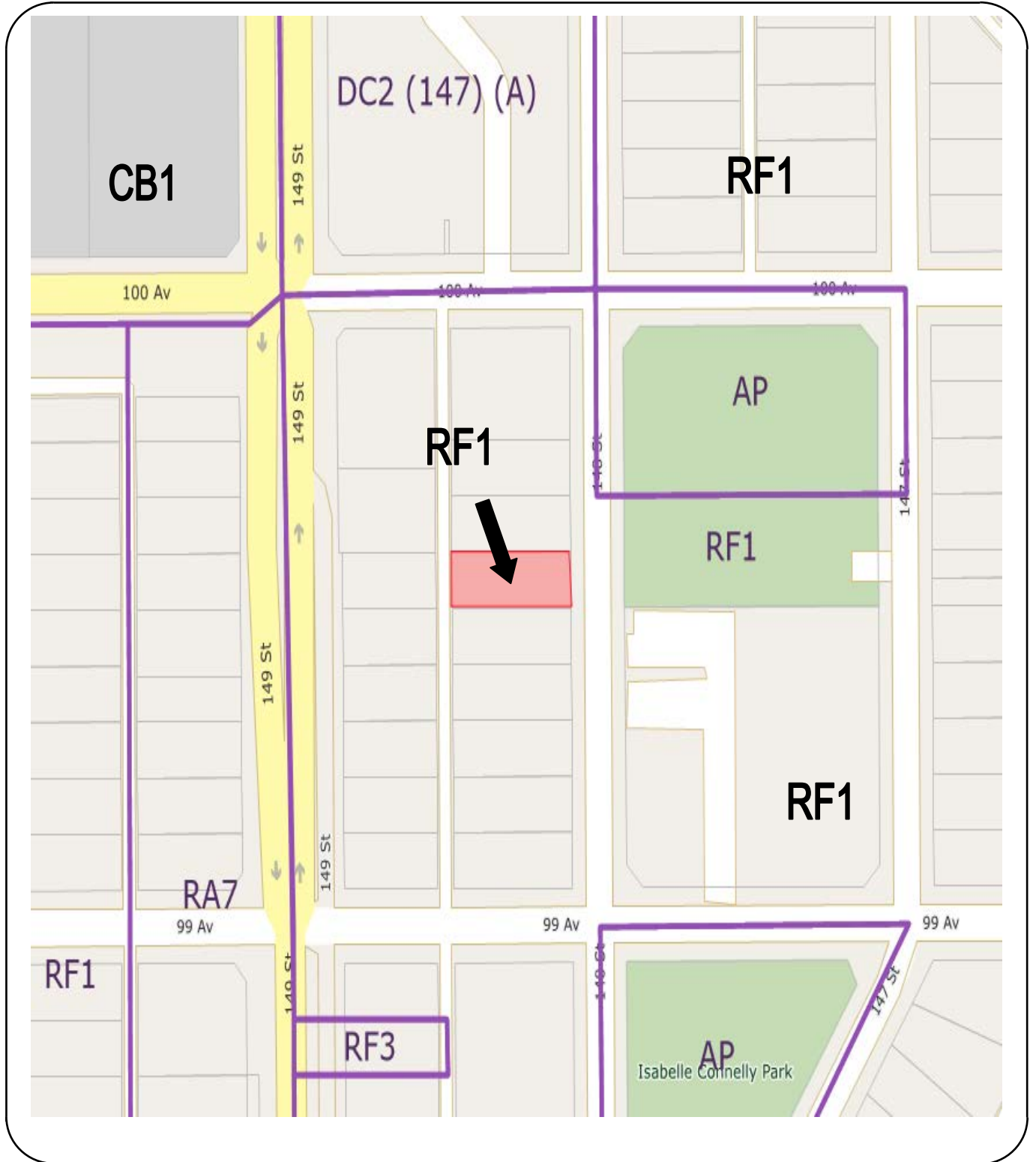
Section 814.5(2) states:

Tier #	Recipient Parties	Affected Parties	Regulation of this Overlay to be Varied
Tier 1	The municipal address and assessed owners of the land wholly or partially located within a distance of <u>60.0 m</u> of the Site of the proposed development and the President of each Community League	The assessed owners of the land wholly or partially located within a distance of <u>60.0 m</u> of the Site of the proposed development and the President of each Community League	814.3(5) – Height

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.

	<h2 style="margin: 0;">Application for Exterior Home Improvement Permit</h2>	Project Number: 300759704-001 Application Date: DEC 17, 2018 Printed: March 12, 2019 at 4:21 PM Page: 1 of 1		
This document is a Development Permit Decision for the development application described below.				
Applicant	Property Address(es) and Legal Description(s) 9922 - 148 STREET NW Plan 4590W Blk 78 Lot 5			
	Location(s) of Work Entryway: 9922 - 148 STREET NW Building: 9922 - 148 STREET NW			
Scope of Application To construct exterior alterations to a Single Detached House (pergola on the Rooftop Terrace).				
Permit Details				
Class Of Permit: Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 673.52			
I/We certify that the above noted details are correct. Applicant signature: _____				
Development Application Decision Refused Issue Date: Mar 12, 2019 Development Authority: HONG, ESTHER Reason for Refusal Height - The maximum height is 10.6m instead of 8.9m (Section 814.3.5). 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.				
Building Permit Decision Refused				
Fees				
	Fee Amount	Amount Paid	Receipt #	Date Paid
Safety Codes Fee	\$4.50	\$4.50	78802103492F001	Dec 17, 2018
Development Application Fee	\$170.00	\$418.00	78802103492F001	Dec 17, 2018
Building Permit Fee (Construction Value)	\$108.00	\$108.00	78802103492F001	Dec 17, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$282.50	\$530.50		
(overpaid by (\$248.00))				
THIS IS NOT A PERMIT				



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-052



TO BE RAISED
ITEM II: 10:30 A.M.

FILE: SDAB-D-19-039

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 243625660-004

APPLICATION TO: Construct an extension to an existing Uncovered Deck (new size: 4.22 metres by 8.57 metres), existing without permits

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: February 6, 2019

DATE OF APPEAL: February 26, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 1746 – Tanager Close NW

LEGAL DESCRIPTION: Plan 1620693 Blk 7 Lot 7

ZONE: (RSL) Residential Small Lot Zone

OVERLAY: North Saskatchewan River Valley and Ravine System Protection Overlay

STATUTORY PLAN(S): Big Lake Area Structure Plan
Starling Neighbourhood Structure Plan

Grounds for Appeal

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

The City did not evaluate the proper impacts associated with the Bylaws.
The Deck meets the intentions of the rules and regulations in place.

General Matters

Appeal Information:

The Subdivision and Development Appeal Board made and passed the following motion on March 21, 2019:

“That the appeal hearing be postponed to April 10 or 11, 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*:

Section 115.2(5) states **Single Detached Housing** is a **Permitted Use** in the **(RSL) Residential Small Lot 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, **Platform Structure** means:

an elevated structure intended for use as outdoor Amenity Area that may project and/or be recessed from the wall of a building, may be surrounded by guardrails, parapet walls or similar features. Common examples include: balconies, raised terraces and decks. This definition does not include a Rooftop Terrace.

Section 115.1 states that the **General Purpose** of the **(RSL) Residential Small Lot Zone** is to:

to provide for smaller lot Single Detached Housing with attached Garages in a suburban setting that provides the opportunity for the more efficient utilization of undeveloped suburban areas and includes the opportunity for Secondary Suites and Garden Suites.

Section 811.1 states that the **General Purpose** of the **North Saskatchewan River Valley and Ravine System Protection Overlay** is “to provide a development Setback from the North Saskatchewan River Valley and Ravine System.”

<i>North Saskatchewan River Valley and Ravine System Protection Overlay</i>

Section 811.3(8) states:

The Development Officer, having regard to the detailed engineering study required in 811.3.3 or 811.3.4 and in consultation with Integrated Infrastructure Services, may apply conditions of approval to any Development Permit issued on a Site that Abuts or is partially or wholly contained within the North Saskatchewan River Valley and Ravine System, as shown in Appendix 1 to this Overlay, including but not limited to, any conditions required to minimize erosion and stabilize soil conditions as well as, when applicable, requirement to comply with subsection 811.3.7, or may refuse the application.


Development Officer’s Determination

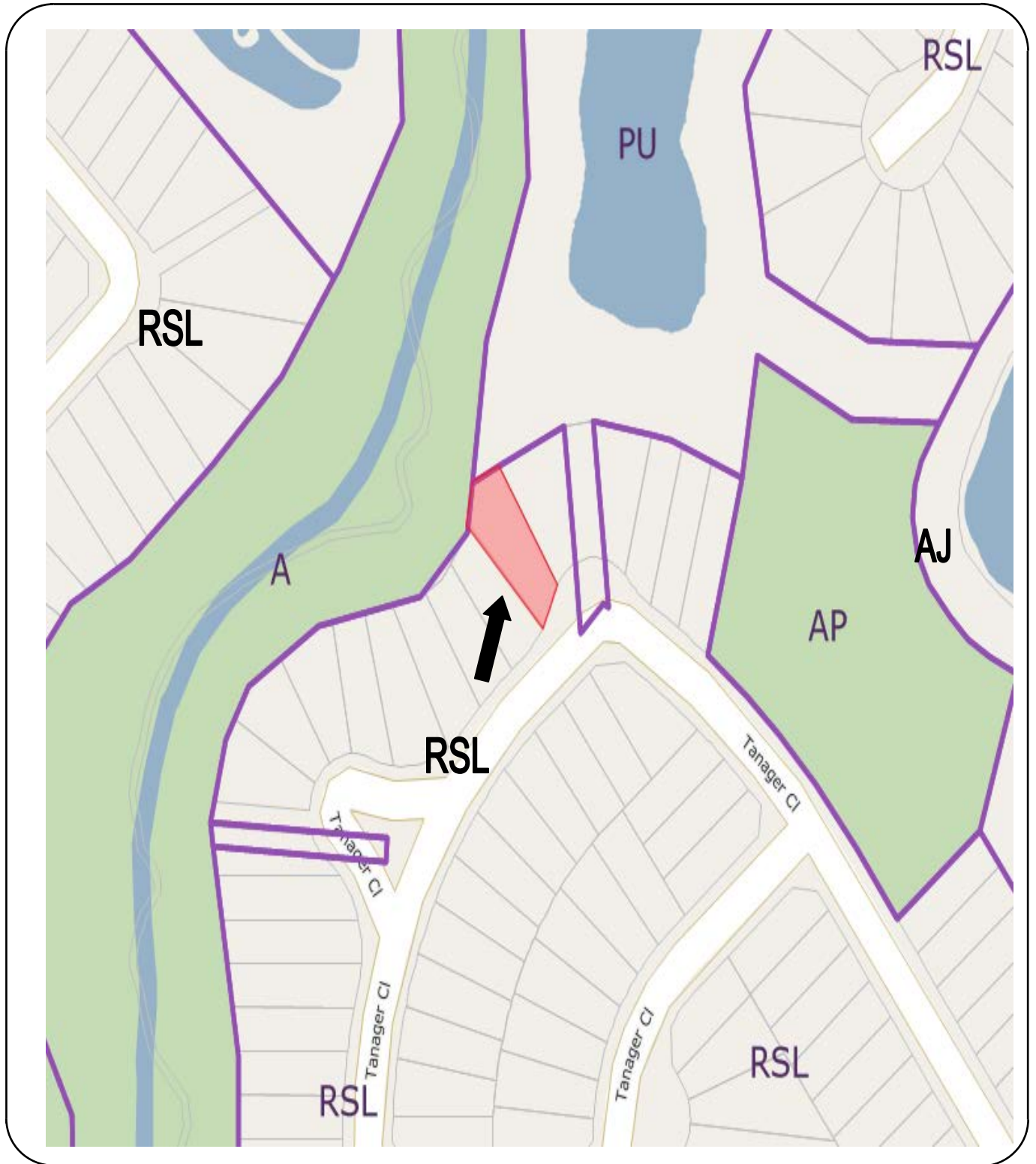
The Uncovered Rear Deck, existing without permits, falls under the North Saskatchewan River Valley and Ravine System Protection Overlay. The Overlay provides a development Setback to minimize erosion and stabilize soil conditions near the North Saskatchewan River Valley and Ravine System.

This development was refused due to a memorandum from Integrated Infrastructure Services advising that the development does not comply with the Overlay (811.3.8). [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.

	<h2 style="margin: 0;">Application for Minor Development Permit</h2>	Project Number: 243625660-004 Application Date: MAR 21, 2018 Printed: February 6, 2019 at 8:14 AM Page: 1 of 1																									
This document is a Development Permit Decision for the development application described below.																											
Applicant	Property Address(es) and Legal Description(s) 1746 - TANAGER CLOSE NW Plan 1620693 Blk 7 Lot 7																										
Scope of Application To construct an extension to an existing Uncovered Deck (new size: 4.22m x 8.57m), existing without permits																											
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> # of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Deck (uncovered) Secondary Suite Included?: N </td> <td style="width: 50%; border: none; vertical-align: top;"> # of Primary Dwelling Units To Construct: Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>			# of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Deck (uncovered) Secondary Suite Included?: N	# of Primary Dwelling Units To Construct: Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none)																							
# of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Deck (uncovered) Secondary Suite Included?: N	# of Primary Dwelling Units To Construct: Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none)																										
I/We certify that the above noted details are correct. Applicant signature: _____																											
Development Application Decision Refused Issue Date: Feb 06, 2019 Development Authority: BAUER, KERRY Reason for Refusal The Uncovered Rear Deck, existing without permits, falls under the North Saskatchewan River Valley and Ravine System Protection Overlay. The Overlay provides a development Setback to minimize erosion and stabilize soil conditions near the North Saskatchewan River Valley and Ravine System. This development was refused due to a memorandum from Integrated Infrastructure Services advising that the development does not comply with the Overlay (811.3.8). 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 <table style="width: 100%; border: none; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right; font-weight: normal;">Fee Amount</th> <th style="text-align: right; font-weight: normal;">Amount Paid</th> <th style="text-align: right; font-weight: normal;">Receipt #</th> <th style="text-align: right; font-weight: normal;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">04889578</td> <td style="text-align: right;">Mar 21, 2018</td> </tr> <tr> <td>Existing Without Permit Penalty Fee</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">04889578</td> <td style="text-align: right;">Mar 21, 2018</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;">\$232.00</td> <td style="text-align: right; border-top: 1px solid black;">\$232.00</td> <td></td> <td></td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$116.00	\$116.00	04889578	Mar 21, 2018	Existing Without Permit Penalty Fee	\$116.00	\$116.00	04889578	Mar 21, 2018	Total GST Amount:	\$0.00				Totals for Permit:	\$232.00	\$232.00		
	Fee Amount	Amount Paid	Receipt #	Date Paid																							
Dev. Application Fee	\$116.00	\$116.00	04889578	Mar 21, 2018																							
Existing Without Permit Penalty Fee	\$116.00	\$116.00	04889578	Mar 21, 2018																							
Total GST Amount:	\$0.00																										
Totals for Permit:	\$232.00	\$232.00																									
THIS IS NOT A PERMIT																											



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-039

