

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
April 17, 2019**

**Hearing Room No. 2
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 2**

I 9:00 A.M. SDAB-D-19-055

WITHDRAWN

Construct a Single Detached House with fireplace, Secondary Suite, rear uncovered deck, veranda and side door entrance.

8338 - 120 Street NW
Project No.: 302317237-001

TO BE RAISED

II 11:00 A.M. SDAB-D-19-041

DEVELOPMENT PERMIT CANCELLED

Change the Use from Personal Service Shop to Restaurant (40.1m2 Public Space) and to construct interior alterations. (Pizza Restaurant)

1803C - 91 Street SW
Project No.: 277937618-003

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-19-055

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:
APPLICATION NO.: 302317237-001

APPLICATION TO: Construct a Single Detached House with fireplace, Secondary Suite, rear uncovered deck, veranda and side door entrance.

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with conditions

DECISION DATE: February 27, 2019

DATE OF APPEAL: March 25, 2019

NOTIFICATION PERIOD: March 25, 2019 through March 26, 2019

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8338 - 120 Street NW

LEGAL DESCRIPTION: Plan 1823348 Blk 12 Lot 11B

ZONE: (RF1) Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

WITHDRAWN

TO BE RAISED

ITEM II: 11:00 A.M.

FILE: SDAB-D-19-041

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:

APPLICATION NO.: 277937618-003

APPLICATION TO: Change the Use from Personal Service Shop to Restaurant (40.1 square metres Public Space) and to construct interior alterations. (Pizza Restaurant)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: February 4, 2019

DATE OF APPEAL: March 5, 2019

NOTIFICATION PERIOD: February 20, 2019 through March 5, 2019

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 1803C - 91 Street SW

LEGAL DESCRIPTION: Condo Common Area (Plan 1721728)

ZONE: (EIB) Ellerslie Industrial Business Zone

OVERLAY: Special Area Ellerslie Industrial

STATUTORY PLAN(S): Ellerslie Area Structure Plan
Summerside Neighbourhood Structure Plan

DEVELOPMENT PERMIT CANCELLED

Grounds for Appeal

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

We have received written notice of a Development Permit Approval for this specific property changing from a Personal Service Shop to Pizza Restaurant.

We oppose this change for the following reasons:

This property has been found to have inadequate parking for the units in the building. Originally the condominium development was supposed to have 102 stalls to service the 26 units, however there are only 84 stalls on the property, This is a variance of 18 stalls.

Unit 101 in particular, is located on the West side of the development parallel to 91 Street, with 3 other end units that are directly adjacent to the only driveway allowing any access to the development. This is a very high traffic location with potential for congestion.

At this West side of the development there are 10 isolated parking stalls parallel to 91 street for the 4 end units to use. The existing businesses operating in the other 3 units already suffer from limited parking, as the Condo Board has only assigned 2 stalls to each unit for their exclusive use, with the remaining 2 stalls available on a first come first serve basis. (Each of these 3 existing businesses had development permits approved with a minimum of 5 offices in each space; suggesting there's already 15 employees using these 10 available stalls on a daily basis)

A restaurant will require several parking spaces for staff, in addition to seated customers, pick-up customers, and delivery drivers such as the substantially growing demands of Skip the Dishes.

In many locations with restaurants and limited parking space, customers often park in drive lanes or at front entrances. We only have a single one-way drive-through lane on the North side of the building directly perpendicular to Unit 101. Any parking in the area of this drive lane will prevent access for the delivery vehicles that many of us require in order to operate our businesses. In addition, the 4 units at the West side of the building all share a common entrance. Any vehicles parked at the entrance would cause a severe safety and fire hazard. There is no street parking available on 91 Street.

The building is zoned for Industrial/Commercial use, and particularly due to the limited parking, approved businesses should be limited to those that will operate in such a manner as to not require excessive parking places or unduly increased vehicle traffic, impairing the access to and function of the other businesses.

We do not approve this change.

<i>General Matters</i>

Appeal Information:

The Subdivision and Development Appeal Board made and passed the following motion on March 27, 2019:

"That the appeal hearing be postponed until April 17, 2019."

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.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority 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,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

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 930.4(3)(26), **Restaurants**, not to exceed 200 occupants nor 240 m² of Public Space, if adjacent to or across the Lane from a Site zoned residential, is a **Discretionary Use** in the **(EIB) Ellerslie Industrial Business Zone**.

Under section 930.4(3)(27), **Specialty Food Services** is a **Discretionary Use** in the **(EIB) Ellerslie Industrial Business Zone**.

Under section 7.4(47), **Restaurants** means:

development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.

Under section 7.4(49), **Specialty Food Services** means:

development where limited types of prepared foods and beverages, excluding alcoholic beverages, are offered for sale to the public, for consumption within the premises or off the Site. This Use typically relies primarily on walk-in clientele, and includes coffee, donut, bagel or sandwich shops, ice cream parlours, and dessert shops.

Under section 6.1, **Occupants** means:

when referring to Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs and Nightclubs, people that may occupy Public Space within any of these Uses, to be calculated at 1 Occupant per 1.2 m² of Public Space.

Under section 6.1, **Public Space** means:

space that is part of an establishment, which is open to the public and not restricted to only employees. Public Space includes any private non-sale hospitality area where products manufactured within the premises are provided to private groups for tasting and sampling. This definition does not include kitchens, administration offices, food or drink preparation areas.

Under section 6.1, **Use** means “the purposes or activities for which a piece of land or its buildings are designed, arranged, developed or intended, or for which it is occupied or maintained.”

Section 7 provides the following with respect to *Use Definitions*:

7.1 General

1. Uses, as set out in subsections 7.2 through 7.9 inclusive, are grouped according to common functional or physical impact characteristics.
2. Use definitions are used to define the range of Uses, which are Permitted Uses or Discretionary Uses, within the various Zones of this Bylaw.

3. The following guidelines shall be applied in interpreting the Use definitions:
 - a. the typical purposes or activities, which may be listed in the definitions, are not intended to be exclusive or restrictive;
 - b. where specific purposes or activities do not conform to any Use definition or generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate. In such a case, the Use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone; and
 - c. the headings such as Residential Uses or Commercial Uses do not mean that the Uses listed under these headings are permitted only in Residential or Commercial Zones of this Bylaw. Reference must be made to the lists of Permitted Uses and Discretionary Uses within each Zone.

Section 930.4(5)(1)(a) states the following with respect to *Additional Development Regulations for Discretionary Uses*:

Convenience Retail Stores, Child Care Services, Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs, Nightclubs and Personal Service Shops shall be sited in accordance with the following:

- a. as part of an office or industrial project where such Discretionary Uses are intended to service and support the principal industrial or office Use.

Section 930.4(1) states that the **General Purpose** of the **(EIB) Ellerslie Industrial Business Zone** is:

to provide for light industrial businesses and high technology development that carries out their operations such that no nuisance factor is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent Non-industrial Zone.

Section 930.1 states that the **General Purpose** of the **Ellerslie Industrial Special Area** is:

to designate a portion of the Ellerslie Area Structure Plan as shown on Appendix I to this Section, as a Special Area and to adopt appropriate land use regulations for this Special Area in order to achieve the objectives of the Ellerslie Area Structure Plan, as adopted under Bylaw 11870, as amended.

Development Officer's Determination

2. Discretionary Use - A Specialty Food Service is approved as a Discretionary Use (Section 930.4.3(27)). [unedited

Parking

Section 54.2, Schedule 1(A)(22), states **Restaurants/Specialty Food Services** requires 1 parking space per 9.6 m² of Public Space.

Development Officer’s Determination


1. Parking - The site has 84 parking spaces, instead of 102 (Section 54.2, Schedule 1) [unedited]

Previous Subdivision and Development Appeal Board Decisions

Application Number	Description	Decision
SDAB-D-18-091	To change the Use from Personal Service Shop to Restaurant (63.03m2 Public Space) and to construct interior alterations (Pizza Restaurant)	July 6, 2018; “The Appeal is allowed and the decision of the Development Authority is REVOKED. The development is REFUSED.”
SDAB-D-15-139	To construct a General Industrial and Commercial Use Building.	July 15, 2015; The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for, subject to CONDITIONS. In granting the development the following variances to the <i>Zoning Bylaw</i> are allowed: 1) Pursuant to Section 54.2. Schedule 1, the overall required off-street parking reduced from 95 spaces to 82 parking spaces.

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: 277937618-003 Application Date: JAN 29, 2019 Printed: March 5, 2019 at 3:19 PM Page: 1 of 3						
Major Development Permit							
This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.							
Applicant	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Property Address(es) and Legal Description(s)</td> </tr> <tr> <td style="text-align: center;">1803C - 91 STREET SW Condo Common Area (Plan 1721728)</td> </tr> <tr> <td>Specific Address(es)</td> </tr> <tr> <td>Suite: 101, 1803 - 91 STREET SW</td> </tr> <tr> <td>Entryway: 101, 1803 - 91 STREET SW</td> </tr> <tr> <td>Building: 1803 - 91 STREET SW</td> </tr> </table>	Property Address(es) and Legal Description(s)	1803C - 91 STREET SW Condo Common Area (Plan 1721728)	Specific Address(es)	Suite: 101, 1803 - 91 STREET SW	Entryway: 101, 1803 - 91 STREET SW	Building: 1803 - 91 STREET SW
Property Address(es) and Legal Description(s)							
1803C - 91 STREET SW Condo Common Area (Plan 1721728)							
Specific Address(es)							
Suite: 101, 1803 - 91 STREET SW							
Entryway: 101, 1803 - 91 STREET SW							
Building: 1803 - 91 STREET SW							
Scope of Permit							
To change the Use from Personal Service Shop to Restaurant (40.1m2 Public Space) and to construct interior alterations. (Pizza Restaurant)							
Permit Details							
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 7245.43	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 Permit Decision							
Approved Issue Date: Feb 04, 2019 Development Authority: ADAMS, PAUL							



Project Number: **277937618-003**
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Major Development Permit

Subject to the Following Conditions

1. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c)
2. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)

ADVISEMENTS:

- a. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)
- b. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
- c. Signs require separate Development Applications.
- d. A building permit is required for any construction or change in Use of a building. For a building permit, and prior to the plans examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre (780-442-5311) for further information.
- e. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
- f. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)
- g. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

Variances

1. Parking - The site has 84 parking spaces, instead of 102 (Section 54.2, Schedule 1)
2. Discretionary Use - A Specialty Food Service is approved as a Discretionary Use (Section 930.4.3(27)).

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Notice Period Begins: Feb 12, 2019 **Ends:** Mar 05, 2019

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$518.00	\$518.00	05614211	Jan 29, 2019

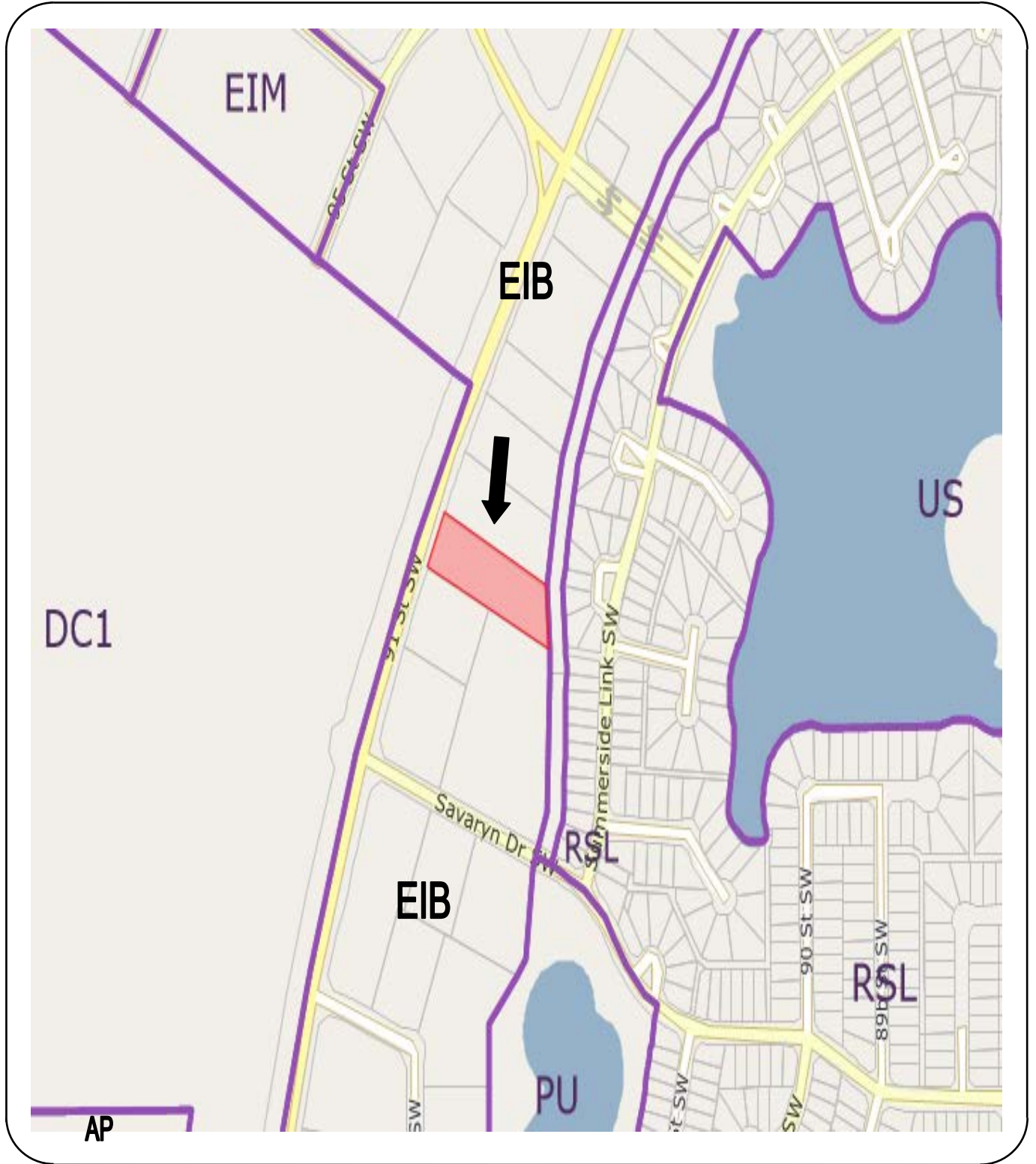


Project Number: **277937618-003**
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Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$518.00</u>	<u>\$518.00</u>		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-041

