

**SUBDIVISION**  
**AND**  
**DEVELOPMENT APPEAL BOARD**  
**AGENDA**

**Thursday, 9:00 A.M.**  
**April 29, 2021**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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I 9:00 A.M. SDAB-D-21-065

██████████  
To change the Use from an Indoor Participant Recreation Services to a Liquor Store and construct interior alterations

12986 - 50 Street NW  
Project No.: 387896425-002  
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**TO BE RAISED**

II 10:30 A.M. SDAB-D-21-052

██████████  
To construct a 4 Dwelling unit Row House with Unenclosed Front Porches

12042 - 103 Street NW  
Project No.: 313371321-001  
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III 2:00 P.M. SDAB-D-21-067

██████████  
To erect a fence at 2.85m in Height in the Side Yard

164 - Warwick Crescent NW  
Project No.: 384029453-002  
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**NOTE:** *Unless otherwise stated, all references to "Section numbers" in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-21-065

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT: [REDACTED]

APPLICATION NO.: 387896425-002

APPLICATION TO: Change the Use from an Indoor Participant Recreation Services to a Liquor Store and construct interior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: March 26, 2021

DATE OF APPEAL: March 31, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 12986 - 50 Street NW

LEGAL DESCRIPTION: Plan 8267ET Blk Z Lot 4

ZONE: (CB2) General Business Zone

OVERLAY: N/A

STATUTORY PLAN: Kennedale Industrial Area Structure Plan

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***Grounds for Appeal***

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

We are solicitors for 2123030 Alberta Ltd. Our client's application, made through its architect H2 Architecture Ltd., for a development permit to develop a liquor store at the above captioned address was refused on March 26, 2021. We hereby appeal the said refusal on the grounds that:

- Liquor stores are a discretionary use in the CB2 General Business Zone;
- The liquor stores identified as being within 500m of the proposed development are caught by the exception in s. 85.2 of the Zoning Bylaw, and no variances are required.
- In the alternative, if any variances to the Zoning Bylaw are required for the proposed development, none of those variances would materially affect the use, enjoyment, and value of neighbouring properties, or unduly interfere with the amenities of the neighbourhood;
- The proposed development is appropriate at the subject location; and
- Such further and other reasons as may be presented at the hearing of the within appeal.

<b><i>General Matters</i></b>
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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 the decision in accordance with subsection (2.1).

**(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 the decision in accordance with subsection (2.1).

**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 clause (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 340.3(11), a **Liquor Store** is a **Discretionary Use** in the **(CB2) General Business Zone**.

Under section 7.4(30) **Liquor Stores** means:

development used for the retail sale of any and all types of alcoholic beverages to the public for off-site consumption. This Use may include retail sales of related products such as soft drinks and snack foods.

Section 340.1 states that the **General Purpose** of the **(CB2) General Business Zone** is:

to provide for businesses that require large Sites and a location with good visibility and accessibility along, or adjacent to, major public roadways. This zone also accommodates limited Residential-related uses.

***Section 85 - Liquor Stores***

1. **Any Liquor Store shall not be located less than 500 m from any other Liquor Store.**
2. Notwithstanding subsection 85(1), a Liquor Store may be located less than 500 m from any other Liquor Store if located:
  - a. outside the boundary shown in Appendix 1 to Section 85, provided:

- i. the Liquor Stores are located on separate Sites, and
  - ii. at least one Liquor Store 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 Liquor Store to the closest point of any other approved Liquor Store.
4. Any Site containing a Liquor Store 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 Liquor Store. 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 Sites 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 Liquor Store 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 Liquor

Store within 500 m of the original approved Development Permit;

- b. the temporary location for any Liquor Store is not within 500 m of any legally conforming Liquor Store; and
  - c. the application for a Development Permit will not result in a total Floor Area for a Liquor Store that is 10.0% greater than the Floor Area of the existing approved Liquor Store, to a maximum increase of 50 m<sup>2</sup>.
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 Liquor Store 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 Liquor Store.
  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. Liquor Stores shall include the following to allow for natural surveillance to promote safe surroundings:
    - a. Customer access is oriented to:
      - i. a public or internal roadway, other than a Lane;
      - ii. a shopping centre parking lot in front of the store; or
      - iii. a mall access that allows visibility from the interior of the mall into the store.
    - b. Premises located at ground level shall include:
      - i. Ample transparency to maintain sight lines into and out of the premises. To ensure transparency and sight lines are maintained:
        1. Not more than 10% of the windows may be covered by Signs, the remainder shall be clear, untinted, and free from obstruction.
      - ii. Outdoor lighting is required to provide a well-lit environment for pedestrians entering and exiting the premises and to illuminate the property. The Development Officer shall require the applicant to



provide a plan showing the location and details of perimeter lighting to ensure adequate lighting.

- iii. Landscaping shall be located such that it does not obstruct sight lines into the premises.

**Development Officer's Determination**

**Section 85(1) - Any Liquor Store shall not be located less than 500 m from any other Liquor Store.**

**Proposed:**

**Site 1 - 13030 50 Street NW  
Required Setback: 500 m  
Proposed Setback: 288 m  
Deficient by: 212 m**

**Reference DP# 001001586-001  
8,215.8m<sup>2</sup> or 0.8 ha  
Zoned DC2.1087**

**Site 2 - 12847 50 Street NW  
Required Setback: 500 m  
Proposed Setback: 113 m  
Deficient by 387 m**

**Reference DP# 308648088-001  
7,460m<sup>2</sup> or 0.7 ha  
Zoned CSC**

**Site 3 - 12715 50 Street NW  
Required Setback: 500 m  
Proposed Setback: 280 m  
Deficient by 220 m**

**Reference BL# 007260776-001  
23,664m<sup>2</sup> or 2.3 ha  
Zoned CSC**

**Under Section 85(6) of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Liquor Store.**

[unedited]

<b><i>Previous Subdivision and Development Appeal Board Decision</i></b>
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<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
SDAB-D-19-194	To change the Use from a General Retail store use to a Cannabis Retail Sales use and to construct interior alterations.	November 19, 2019; The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to 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>387896425-002</b> Application Date: MAR 01, 2021 Printed: April 1, 2021 at 7:54 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> 12986 - 50 STREET NW Plan 8267ET Blk Z Lot 4  <b>Specific Address(es)</b> Suite: 12988 - 50 STREET NW Entryway: 12988 - 50 STREET NW Building: 12986 - 50 STREET NW		
<b>Scope of Application</b> To change the Use from an Indoor Participant Recreation Services to a Liquor Store and construct interior alterations.			
<b>Permit Details</b> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">                     Class of Permit: Class B                      Gross Floor Area (sq.m.):                      New Sewer Service Required: N                      Site Area (sq. m.):                 </td> <td style="width: 50%;">                     Contact Person:                      Lot Grading Needed?: N                      NumberOfMainFloorDwellings:                      Str. Plan Overlay/Annex Area: (none)                 </td> </tr> </table>		Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Str. Plan Overlay/Annex Area: (none)
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Str. Plan Overlay/Annex Area: (none)		
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Mar 26, 2021 <b>Development Authority:</b> CHOW, STEPHEN			
<b>THIS IS NOT A PERMIT</b>			



Project Number: **387896425-002**  
 Application Date: MAR 01, 2021  
 Printed: April 1, 2021 at 7:54 AM  
 Page: 2 of 2

## Application for Major Development Permit

**Reason for Refusal**

Section 85(1) - Any Liquor Store shall not be located less than 500 m from any other Liquor Store.

**Proposed:**

Site 1 - 13030 50 Street NW  
 Required Setback: 500 m  
 Proposed Setback: 288 m  
 Deficient by: 212 m

Reference DP# 001001586-001  
 8,215.8m<sup>2</sup> or 0.8 ha  
 Zoned DC2.1087

Site 2 - 12847 50 Street NW  
 Required Setback: 500 m  
 Proposed Setback: 113 m  
 Deficient by 387 m

Reference DP# 308648088-001  
 7,460m<sup>2</sup> or 0.7 ha  
 Zoned CSC

Site 3 - 12715 50 Street NW  
 Required Setback: 500 m  
 Proposed Setback: 280 m  
 Deficient by 220 m

Reference BL# 007260776-001  
 23,664m<sup>2</sup> or 2.3 ha  
 Zoned CSC

Under Section 85(6) of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Liquor Store.

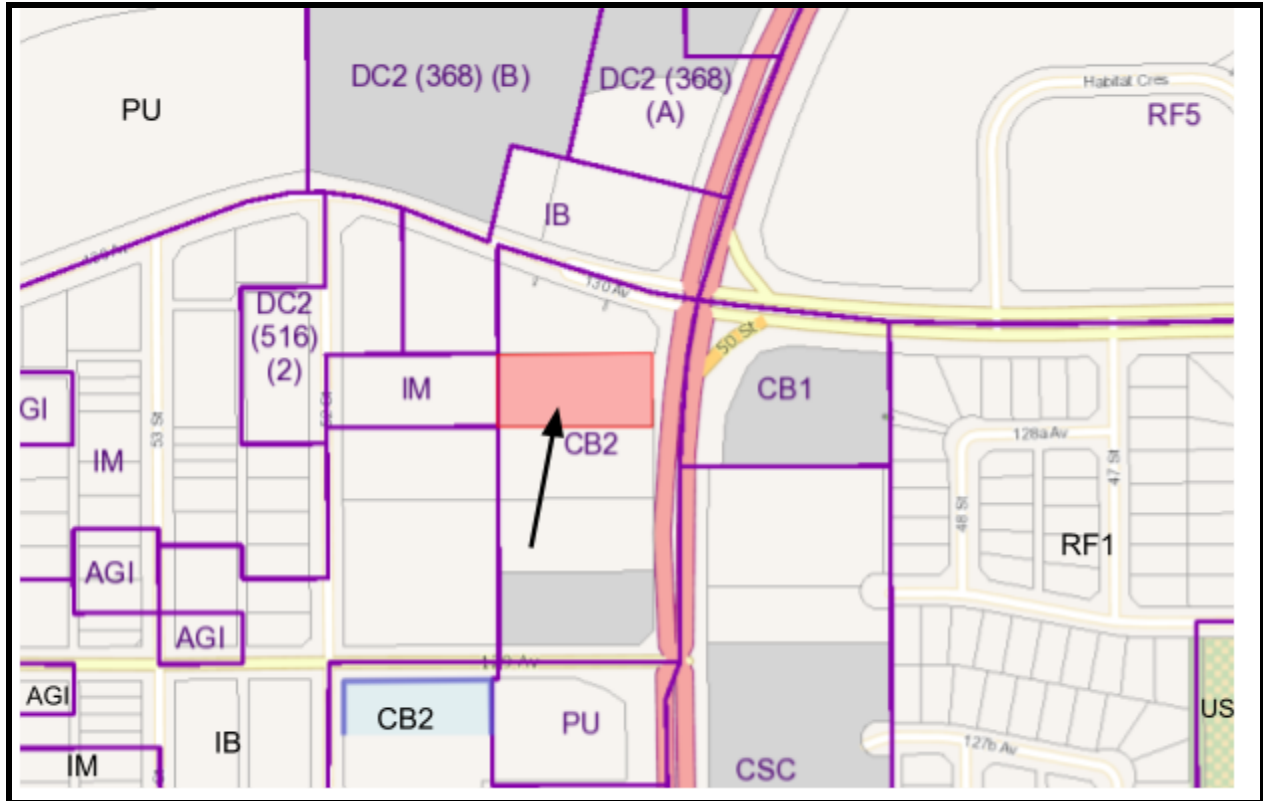
**Rights of Appeal**

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	\$528.00	\$528.00	06985901730X001	Mar 09, 2021
Total GST Amount:	\$0.00			
Totals for Permit:	\$528.00	\$528.00		

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-21-065

▲  
**N**

**TO BE RAISED**

ITEM II: 10:30 A.M.

FILE: SDAB-D-21-052

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT: [REDACTED]

APPLICATION NO.: 313371321-001

APPLICATION TO: Construct a 4 Dwelling unit Row House with Unenclosed Front Porches

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: February 25, 2021

DATE OF APPEAL: March 8, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 12042 - 103 Street NW

LEGAL DESCRIPTION: Plan RN52 Blk 3 Lot 41

ZONE: (RF3) Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

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***Grounds for Appeal***

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

Our variance is only 5.9' into the rear setback, and 3 other 4-plexes within walking distance all fell within the same variance (rear setback) and they were all approved. The Prince Charles neighbourhood, which is a few minutes away, has a 4-plex on every single corner, and the majority of these lots are 140' long, which is about 10' less than the average 4-plex lot

in the city. After doing further research, almost every 4-plex I found on a 50' x 150' lot, had the same variance (rear setback). Lastly, the city was willing to approve my application if I could get the neighbour to sign a support letter. After speaking to the neighbour, their concerns had nothing to do with the 5.9' variance. Their concern was #1) parking and #2) windows facing their yard. If I take 5' off of the build, this will not alleviate the neighbours concerns. If I take 10' off of the build, this still will not alleviate the neighbours concerns. If we build a 2 storey duplex with a master bed in the front and 2 bedrooms facing into the back, there will still be windows facing into their yard. If we put legal suites into the basements of a 2 storey duplex, we will still require the same amount of parking stalls. To conclude, I do not believe the reasons for non-support from the neighbour of this development has anything to do with the actual variance being refused.

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

**The Subdivision and Development Appeal Board (the “Board”) made and passed the following motion on March 31, 2021:**

**“That the appeal hearing be rescheduled to April 28 or April 29, 2021 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.

**(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 clause (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 140.2(5), **Multi-unit Housing** is a **Permitted Use** in the **(RF3) Small Scale Infill Development Zone**.

Under section 7.2(4), **Multi-unit Housing** means:

development that consists of three or more principal Dwellings arranged in any configuration and in any number of buildings.

Section 140.1 states that the **General Purpose** of the **(RF3) Small Scale Infill Development Zone** is “to provide for a mix of small scale housing.”

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

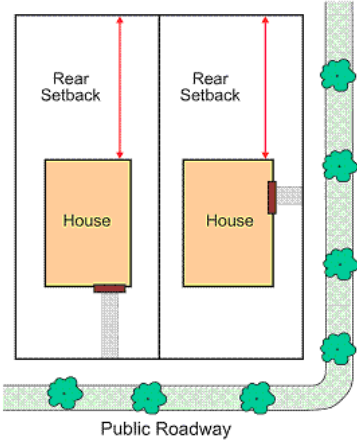
to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the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

***Rear Setback***

Section 814.3(4) states “The minimum Rear Setback shall be 40% of Site Depth, [...]”

Under section 6.1, **Rear Setback** means:

the distance that a development or a specified portion of it, must be set back from a Rear Lot Line. A Rear Setback is not a Rear Yard, Amenity Space or Separation Space.



**Development Officers Determination**

**Reduced Rear Setback - The distance from the row house to the rear property line (abutting the alley) is 16.5m instead of 18.3m (Section 814.3.4).**

[unedited]

***Mature Neighbourhood Overlay - Community Consultation***

Section 814.5(1) states:

When the Development Officer receives a Development Permit Application for a new principal building or 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) or 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:



<b>Tier #</b>	<b>Recipient Parties</b>	<b>Affected Parties</b>	<b>Regulation of this Overlay Proposed to be Varied</b>
Tier 2	The municipal address and assessed owners of the land Abutting the Site, directly adjacent across a Lane from the Site of the proposed development and the President of each Community League	The assessed owners of the land Abutting the Site and directly adjacent across a Lane from the Site of the proposed development	814.3(4) – Rear Setback

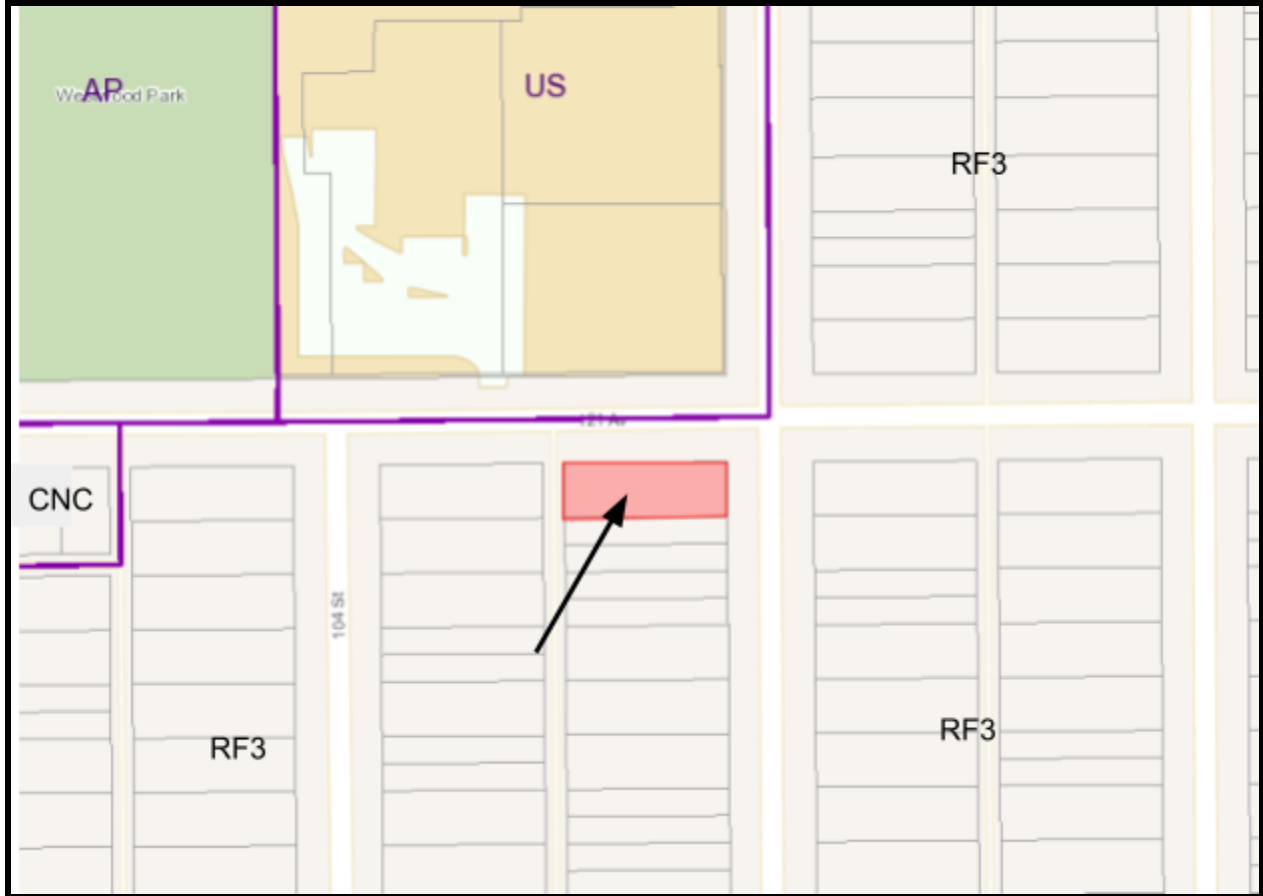
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Notice to Applicant/Appellant

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 Minor Development Permit</h2>	Project Number: <b>313371321-001</b> Application Date: MAY 10, 2019 Printed: February 25, 2021 at 1:49 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> 12042 - 103 STREET NW Plan RN52 Blk 3 Lot 41  <b>Specific Address(es)</b> Entryway: 12042 - 103 STREET NW Building: 12042 - 103 STREET NW																																									
<b>Scope of Application</b> To construct a 4 Dwelling unit Row House with Unenclosed Front Porches.																																										
<b>Permit Details</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;">                     # of Dwelling Units Add/Remove: 3                      # of Secondary Suite Dwelling Units To Construct:                      Client File Reference Number:                      Minor Dev. Application Fee: Row House up to 4 dwellings                      Secondary Suite Included?: N                 </td> <td style="width: 50%; border: none; vertical-align: top;">                     # of Primary Dwelling Units To Construct: 4                      Class of Permit: Class B                      Lot Grading Needed?: Y                      New Sewer Service Required: Y                       Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay                 </td> </tr> </table>			# of Dwelling Units Add/Remove: 3 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Row House up to 4 dwellings Secondary Suite Included?: N	# of Primary Dwelling Units To Construct: 4 Class of Permit: Class B Lot Grading Needed?: Y New Sewer Service Required: Y  Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay																																						
# of Dwelling Units Add/Remove: 3 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Row House up to 4 dwellings Secondary Suite Included?: N	# of Primary Dwelling Units To Construct: 4 Class of Permit: Class B Lot Grading Needed?: Y New Sewer Service Required: Y  Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay																																									
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Feb 25, 2021 <b>Development Authority:</b> YEUNG, KENNETH  <b>Reason for Refusal</b> Reduced Rear Setback - The distance from the row house to the rear property line (abutting the alley) is 16.5m instead of 18.3m (Section 814.3.4).  <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.																																										
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**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-21-052

▲  
**N**

ITEM III: 2:00 P.M.

FILE: SDAB-D-21-067

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT: [REDACTED]

APPLICATION NO.: 384029453-002

APPLICATION TO: Erect a fence at 2.85m in Height in the Side Yard

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: March 18, 2021

DATE OF APPEAL: April 5, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 164 - Warwick Crescent NW

LEGAL DESCRIPTION: Plan 8421192 Blk 57 Lot 158

ZONE: (RF1) Single Detached Residential Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

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***Grounds for Appeal***

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

Please see the comprehensive reasons for appeal included on file.

<b><i>General Matters</i></b>
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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.

**(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 clause (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 110.2(7), **Single Detached Housing** is a **Permitted Use** in the **(RF1) Single Detached Residential Zone**.

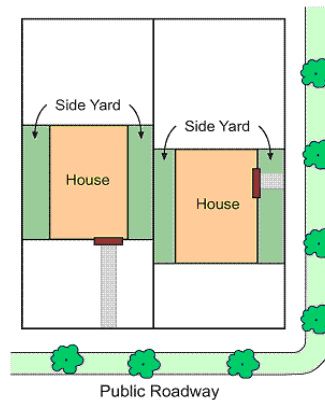
Under section 6.1, **Accessory** means “when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.”

Under section 6.1, **Fence** means “a structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.”

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

Under section 6.1, **Side Yard** means:

that portion of a Site abutting a Side Lot Line extending from the Front Yard to the Rear Yard. The Side Yard is situated between the Side Lot Line and the nearest wall of principal building, not including projections.



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.

***Fences, Walls, Gates, and Privacy Screening in Residential Zones***

Section 49.1 states the following with respect to *Fences, walls and gates*:

- a. The regulations contained within Section 49.1 of this Bylaw apply to:

- i. the Height of the material used in the construction of a Fence, wall, or gate, such as but not limited to boards, panels, masonry, ornamental iron, and chain link, plus any additional elements used for screening, such as, but not limited to, lattice.
- b. Notwithstanding subsection 49(1)(a), the regulations for Fences, walls, and gates contained within this Section do not apply to the Height of the posts or other supporting material used to anchor the Fence, wall, or gate.
- c. The Height of a Fence, wall, or gate shall be measured from the general ground level 0.5 m back from the property line of the Site on which the Fence, wall, or gate is to be constructed.
- d. On an Interior Site, the Height of a Fence, wall, or gate shall not exceed:**
  - i. 1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard, and
  - ii. 1.85 m in all other Yards.**
- e. On a Corner Site, the Height of a Fence, wall, or gate shall not exceed:
  - i. 1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard,
  - ii. 1.2 m for the portion of the Fence, wall, or gate situated between the flanking Side Lot Line and the foremost side Façade of the principal structure, and extending from the Front Lot Line to the Rear Lot Line, and
  - iii. 1.85 m in all other Yards.
- f. In the case where the permitted Height of a Fence, wall, or gate is 1.2 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 1.85 m, in order to provide additional screening from public roadways or incompatible adjacent Uses,
- g. In the case where the permitted Height of a Fence, wall, or gate is 1.85 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 m, in order to provide additional screening from public roadways or incompatible adjacent Uses,
- h. Notwithstanding subsection 49.1(f) and subsection 49.1(g) of this Bylaw, in the case of Double Fronting Sites, the Development Officer may grant a variance to allow a Fence, wall, or gate of up to 1.85 m in Height in one of the Front Yards, and allow a Fence, wall, or gate of up to 2.44 m in Height in the other Front Yard, having regard to the location of

Fences, walls, and gates in the surrounding area and the requirement for screening.

**Development Officer's Determination**

**1. Fence Height - The fence height on the side property line abutting 168 - Warwick Crescent NW is 2.85m, instead of 1.82m (Section 49.1.d.ii)**


[unedited]

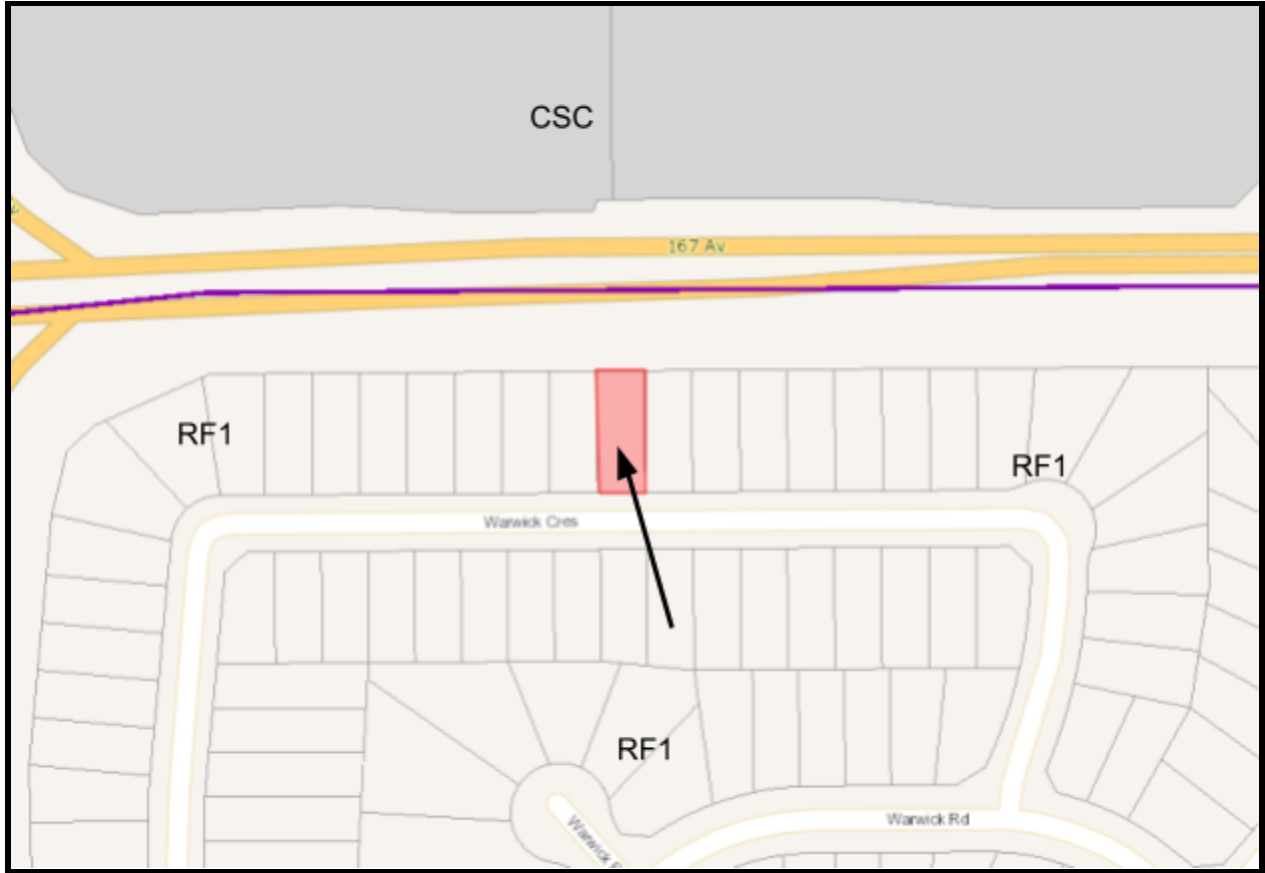
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Notice to Applicant/Appellant

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>384029453-002</b> Application Date: JAN 18, 2021 Printed: March 18, 2021 at 1:14 PM Page: 1 of 1																							
<h2 style="margin: 0;">Application for Overheight Fence 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> 164 - WARWICK CRESCENT NW Plan 8421192 Blk 57 Lot 158																							
	<b>Location(s) of Work</b> Suite: 164 - WARWICK CRESCENT NW Entryway: 164 - WARWICK CRESCENT NW Building: 164 - WARWICK CRESCENT NW																							
<b>Scope of Application</b> To erect a fence at 2.85m in Height in the Side Yard.																								
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**SURROUNDING LAND USE DISTRICTS**

**Site Location** ←

▲  
**N**

File: SDAB-D-21-067