

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
August 1, 2018**

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

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

I	9:00 A.M.	SDAB-D-18-113	Construct a side uncovered deck (4.97 metres x 4.18 metres @ 0.81 metres Height.) with pergola and hot tub (2.06 metres x 1.84 metres) to a Single Detached House. Existing without permits 8707 - 140 Street NW Project No.: 282871006-001
---	-----------	---------------	---

II	10:30 A.M.	SDAB-D-18-114	Increase the occupancy and public space of a Restaurants Use (67 square metres public space) and to change the Use of the second floor to (2) Dwellings of Apartment Housing, existing without permits 6010 - 104 Street NW Project No.: 064420917-005
----	------------	---------------	--

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-18-113

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

APPELLANT:

APPELLANT’S ADDRESS: 13915 - 88 Avenue

APPLICATION NO.: 282871006-001

APPLICATION TO: Construct a side uncovered deck (4.97 metres by 4.18 metres @ 0.81 metres Height.) with pergola and hot tub (2.06 metres by 1.84 metres) to a Single Detached House (existing without permits)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: June 15, 2018

DATE OF APPEAL: July 10, 2018

NOTIFICATION PERIOD: June 21, 2018 through July 12, 2018

RESPONDENT: Permit Masters

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8707 - 140 Street NW

LEGAL DESCRIPTION: Plan 4629KS Blk 14 Lot 13

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:

Pergola Eave Projection; (section 44.1.c.ii). Presently the Pergola Eave Projection is over the property line and is on the property at street address 13915-88 Ave. N.W. Present and future property owners at 13915-88 Ave. N.W. will not accept the variance and or discretionary use of this projection onto this property. Pergola Eave Projection must be adjusted to meet the present required separation space under Zoning Bylaw 12800. The Pergola Eave Projection shall only be on the property at 8707-140 Street N.W.

General Matters

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;

...

- (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 110.1, 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, and Garden Suites, as well as Semi-detached Housing and Duplex Housing under certain conditions.

Under Section 110.2(5), **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 only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.”

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 814.1, 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.

Front Lot Line

Section 50.3(5) stipulates that an Accessory building shall be located as follows:

- a) an Accessory building or structure shall be located not less than 18.0 metres from the Front Lot Line, unless it complies with the Setback requirements for a principal building;

Development Officer’s Determination

Accessory building or structure (Hot tub) is located 8.41 metres from the front property line, instead of minimum of 18 metres (section 50.3.5.a). [unedited]

Side Lot Line

Section 50.3(5) stipulates that an Accessory building shall be located as follows:

- b) an Accessory building or structure shall be located not less than 0.9 metres from the interior Side Lot Line, except:
 - i. where it is a mutual Garage erected on the common property line to the satisfaction of the Development Officer;
 - ii. where a Garage is placed on the common property line in accordance with the provisions of the RPL Zone;

- iii. where it is located on a Site governed by the RF4 Zone and is a detached Garage where the vehicle doors face a Lane Abutting the Site, the minimum distance shall be 0.6 m from the Side Lot Line; or
- iv. where the Accessory building does not exceed the permitted Fence Height.

Development Officer's Determination

Accessory building or structure (hot tub) is located 0.14 metres from the side property line instead of 0.9metres (section 50.3.5.b). [unedited]

Projection

Section 44.1(c)(ii) states eaves or similar architectural features on Accessory buildings, may project into a required Setback or Separation Space, provided that such projections do not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater, and 0.46 metres for Setbacks or Separation Spaces of less than 1.2 metres.

Development Officer's Determination

Pergola Eave Projection: no eave setback is provided, where 0.44 metres is required for separation spaces less than 1.2 metres (section 44.1.c.ii) [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.



Project Number: **282871006-001**
 Application Date: MAY 22, 2018
 Printed: July 11, 2018 at 8:20 AM
 Page: 1 of 2

Minor 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	Property Address(es) and Legal Description(s) 707 - 140 STREET NW Plan 4629KS Blk 14 Lot 13 Specific Address(es) Suite: 8707 - 140 STREET NW Entryway: 8707 - 140 STREET NW Building: 8707 - 140 STREET NW
------------------	--

Scope of Permit
 To construct a side uncovered deck (4.97m x 4.18m @ 0.81m Height.) with pergola and hot tub (2.06m x 1.84m) to a Single Detached House. Existing without permits.

Permit Details # of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Development Application Fee: Deck (uncovered) Secondary Suite Included?: N	Class of Permit: Class B Lot Grading Needed?: N New Sewer Service Required: N/A Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay
--	--

I/We certify that the above noted details are correct.
 Applicant signature: _____

Development Permit Decision
 Approved
Subject to the Following Conditions
 This Development Permit authorizes a side uncovered deck with pergola and hot tub (1.84m x 2.06m) in the rear side yard of a Single Detached House. The development shall be installed in accordance with the stamped and approved drawings.

 Any future deck enclosure or cover requires a separate development and building permit approval.

ADVISEMENTS:

 An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

 Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.
Variations
 1. Accessory building or structure (Hot tub) is located 8.41 m from the front property line, instead of minimum of 18 m (Section 50.3.5.a)
 2. Accessory building or structure (Hot tub) is located 0.14 m from the side property line instead of 0.9 m (Section 50.3.5.b)
 3. Pergola Eave Projection: no eave setback is provided, where 0.44 m is required for separation spaces less than 1.2 m (Section 44.1.c.ii)



Project Number: **282871006-001**
 Application Date: MAY 22, 2018
 Printed: July 11, 2018 at 8:20 AM
 Page: 2 of 2

Minor Development Permit

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.

Issue Date: Jun 15, 2018 **Development Authority:** WATTS, STACY
Notice Period Begins: Jun 21, 2018 **Ends:** Jul 12, 2018

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$116.00	\$116.00	05038239	May 22, 2018
Existing Without Permit Penalty Fee	\$116.00	\$116.00	05104218	Jun 15, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$232.00	\$232.00		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-113



ITEM II: 10:30 A.M.

FILE: SDAB-D-18-114

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 064420917-005

APPLICATION TO: Increase the occupancy and public space of a Restaurants Use (67 m2 public space) and to change the Use of the second floor to (2) Dwellings of Apartment Housing, existing without permits

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: June 8, 2018

DATE OF APPEAL: July 4, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 6010 - 104 Street NW

LEGAL DESCRIPTION: Plan 3553P Blk 41 Lot 6

ZONE: CB2-General Business Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

Grounds for Appeal

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

The Apartments were there before I purchase this property in 2003. I will be more then happy to provide you the details in this regards.

The second part is Parking - We had the Parking exemption granted in 2003 upon building this restaurant. We also have a Letter for extra Eight parking, plus more in the evening for the Restaurant operations.

General Matters

The decision of refusal by the Development Officer is dated June 8, 2018. The Notice of Appeal was filed on July 4, 2018.

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 clause (d), must comply with any land use bylaw in effect;

...

- (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.

Non-Conforming use and non-conforming buildings

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of a land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use or part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- a) to make it a conforming building,
- b) for routine maintenance of the building, if the development authority considers it necessary, or in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

General Provisions from the *Edmonton Zoning Bylaw*:

Under Section 340.1, 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.

Under section 340.2(26), **Restaurants**, for less than 200 occupants and 240 square metres of Public Space, are a **Permitted Use** in the **(CB2) General Business Zone**.

Under 7.4(47), **Restaurant** 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 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 340.3(2), **Apartment Housing** is a **Discretionary Use** in the **(CB2) General Business Zone**.

Under section 7.2, **Apartment Housing** means “development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.”

Under section 6.1, **Dwelling** means “a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for

food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.”

Parking

Section 54.2 (23) Schedule 1(A) states that **Restaurants** are required 1 parking space per 9.6 metres squared of Public Space.

Section 54.2(1) Schedule 1(A) states that **Apartment housing** requires a minimum of 1 parking space per 1 Bedroom Dwellings.

Development Officer’s Determination

Parking - The site has 5 parking stalls, instead of 9 (Section 54.2 and Schedule 1)

Based on the site width and parking space dimensions requirements of Section 54.2, the Development Officer determines that there are 5 parking spaces that meet requirements.[unedited]

Loading Space

Section 54.4 Schedule 3(1) states that any development within the Commercial or Industrial Use Classes, excluding Professional, Financial and Office Support Services with a total floor area of building less than 465 metres squared requires a minimum number of 1 loading space.

Development Officer’s Determination

Loading space - The site has no loading spaces, instead of one (Section 54.4 and Schedule 3). [unedited]

Amenity Area

Under section 340.5.3 (c), Amenity Area shall be provided in accordance with Section 46 of this Bylaw.

Under Section 46.1, **Amenity Area** shall only be required for Row Housing, Stacked Row Housing, and Apartment Housing.

Under Section 46.2 Amenity Area shall be provided in accordance with Table 46(2)

Table 46(2) Amenity Area Requirements			
	Minimum Amenity Area provided on Site per Dwelling	Minimum percentage of total required Amenity Area provided on Site at ground level	Maximum percentage of total required Amenity Area provided on Site in a Yard abutting a public roadway other than a Lane at ground level

d. Apartment Housing	7.5 m2	0%	50%
----------------------	--------	----	-----

Development Officer's Determination

Amenity area - no Amenity areas for the Apartments are provided (Section 46 and Section 340.5.3(c)). [unedited]

Non-Conforming Building

Under Section 11.3(2), the Development Officer may approve, with or without conditions as a Class B Discretionary Development, an enlargement, alteration or addition to a non-conforming building if the non-conforming building complies with the Uses prescribed for that land in this Bylaw and the proposed development would not, in their opinion:

1. unduly interfere with the amenities of the neighbourhood; or
2. materially interfere with or affect the use, enjoyment or value of neighbouring properties.


Under Section 340.4 (1), the minimum Site Frontage shall be 30.0 metres unless access is provided from a service road.

Development Officer's Determination

Non-Conforming Building - This commercial building no longer conforms to current zoning rules, which may have changed since it was originally constructed. This permit does not increase the non-conformity of the building Site frontage. (Section 11.3.2 and Section 310.4.1).

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: 64420917-005 Application Date: NOV 16, 2015 Printed: July 4, 2018 at 9:02 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.																
Applicant	Property Address(es) and Legal Description(s) 6010 - 104 STREET NW Plan 3553P Blk 41 Lot 6 Specific Address(es) Entryway: 6010 - 104 STREET NW Building: 6010 - 104 STREET NW															
Scope of Application To increase the occupancy and public space of a Restaurants Use (67 m2 public space) and to change the Use of the second floor to (2) Dwellings of Apartment Housing, existing without permits.																
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> Class of Permit: Class B Gross Floor Area (sq.m.): 121.9 New Sewer Service Required: N/A Site Area (sq. m.): 405.72 </td> <td style="width: 50%; border: none; vertical-align: top;"> Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table> <p>I/We certify that the above noted details are correct.</p> <p>Applicant signature: _____</p>		Class of Permit: Class B Gross Floor Area (sq.m.): 121.9 New Sewer Service Required: N/A Site Area (sq. m.): 405.72	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)													
Class of Permit: Class B Gross Floor Area (sq.m.): 121.9 New Sewer Service Required: N/A Site Area (sq. m.): 405.72	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)															
Development Application Decision Refused Reason for Refusal <ol style="list-style-type: none"> 1. Parking - The site has 5 parking stalls, instead of 9 (Section 54.2 and Schedule 1) <p>Based on the site width and parking space dimensions requirements of Section 54.2, the Development Officer determines that there are 5 parking spaces that meet requirements.</p> <ol style="list-style-type: none"> 2. Loading space - The site has no loading spaces, instead of one (Section 54.4 and Schedule 3). 3. Amenity area - no Amenity areas for the Apartments are provided (Section 46 and Section 340.5.3(c)). 4. Non-Conforming Building - This commercial building no longer conforms to current zoning rules, which may have changed since it was originally constructed. This permit does not increase the non-conformity of the building Site frontage. (Section 11.3.2 and Section 310.4.1). 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.																
Issue Date: Jun 08, 2018 Development Authority: ROBINSON, GEORGE																
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"></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;">\$316.00</td> <td style="text-align: right;">\$316.00</td> <td style="text-align: right;">02896118</td> <td style="text-align: right;">Nov 16, 2015</td> </tr> <tr> <td>DP Notification Fee</td> <td style="text-align: right;">\$100.00</td> <td style="text-align: right;">\$100.00</td> <td style="text-align: right;">02896118</td> <td style="text-align: right;">Nov 16, 2015</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$316.00	\$316.00	02896118	Nov 16, 2015	DP Notification Fee	\$100.00	\$100.00	02896118	Nov 16, 2015
	Fee Amount	Amount Paid	Receipt #	Date Paid												
Major Dev. Application Fee	\$316.00	\$316.00	02896118	Nov 16, 2015												
DP Notification Fee	\$100.00	\$100.00	02896118	Nov 16, 2015												
THIS IS NOT A PERMIT																



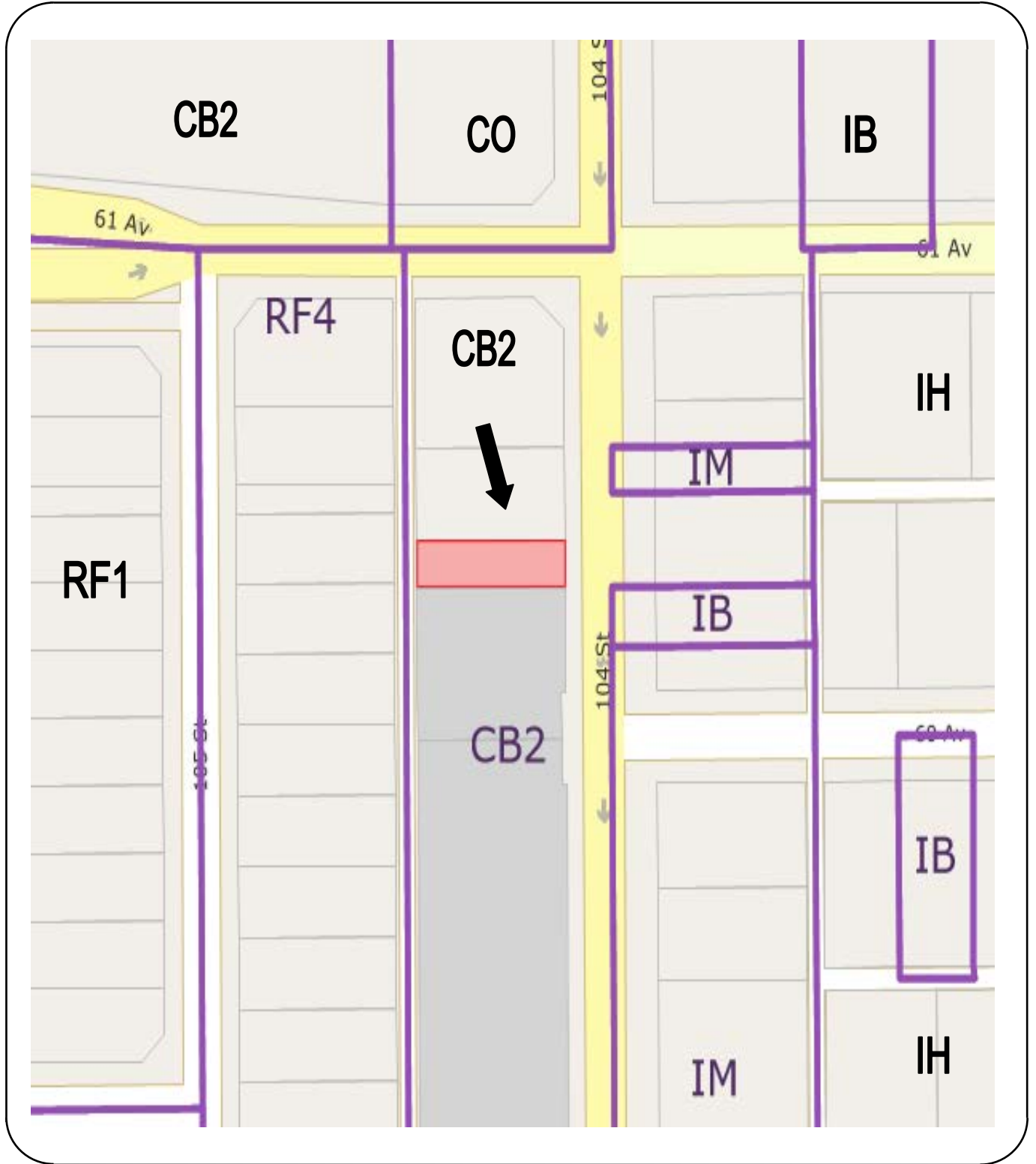
Application for Major Development Permit

Project Number: **64420917-005**
Application Date: NOV 16, 2015
Printed: July 4, 2018 at 9:02 AM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	\$416.00	\$416.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-114

