

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
August 23, 2017**

**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-17-148

To construct an Accessory building (detached
Garage, 8.53 metres by 9.75 metres) and to
demolish an existing Garage

6727 - 94 Avenue NW
Project No.: 254175082-001

II 10:30 A.M. SDAB-D-17-149

To change the Use from a Restaurant to a Bar
and Neighbourhood Pub. (NYALA LOUNGE)

10875 - 98 Street NW
Project No.: 245380263-001

III 10:30 A.M. SDAB-D-17-150

To develop an Outdoor Patio to an existing
Restaurant. (NYALA Ethiopian Restaurant)

10875 - 98 Street NW
Project No.: 245489756-001

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-17-148

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 254175082-001

APPLICATION TO: Construct an Accessory building (detached Garage, 8.53 metres by 9.75 metres) and to demolish existing Garage

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 28, 2017

DATE OF APPEAL: July 28, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 6727 - 94 Avenue NW

LEGAL DESCRIPTION: Plan 6450KS Blk 36 Lot 19

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:

My client is wishing to demolish the current garage on his property and replace it with a brand new one. The current garage is quite old and has a crumbling concrete floor and water infiltration issues. We are looking to have the maximum allowable ridge height for his garage increased from 5.8 meters to 6.6 meters. A 0.8 meter increase that will allow him to have an accessible storage area above the main car ports. This will allow him to de-clutter his current living space and free up more garage space to be able to park his vehicles in the garage instead of on the road in front of his home. As the detached garage faces the rear alley way, we don't believe that the increase in height will have any adverse effects on his surrounding neighbors.

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.

(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 within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the 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 110.2(4), **Single Detached Housing** is a **Permitted Use** in the **RF1 Single Detached Residential Zone**.

Under section 7.2(9), **Single Detached Housing** means:

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.

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

...to retain Single Detached Housing, while allowing infill on narrow lots, including Secondary Suites under certain conditions.

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

...to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

<i>Height</i>

Section 50.3.2 states an Accessory building or structure shall not exceed 4.3 metres in Height.

Section 52.1.a. states the Development Officer shall calculate building Height by determining the roof type, and applying the following: For hip and gable roof types Height shall be determined by measuring from the horizontal plane through Grade to the midpoint of the highest roof. The midpoint is determined to be between the end of the eave (intersection of the fascia board and the top of the roof sheathing, or less, in accordance with Section 44), and the top of the roof.

Section 52.2.c states where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.5 metres above the maximum permitted building Height of the Zone or overlay, or in the case of a Garage Suite the maximum permitted building Height in accordance with Section 87 of this Bylaw.

Development Officer's Determination:

In a Residential Zone, an Accessory building or structure shall not exceed 4.3 metres in Height. For gable roofs, Height shall be determined by measuring from the horizontal plane through Grade to the midpoint of the highest roof. The ridge line of the roof shall not extend more than 1.5 m above the maximum permitted building Height (Reference Section 50.3.2, 52.1.a, 52.2.c).

Proposed Height, from Grade to Roof Midpoint = 5.6 metres

Exceeds maximum permitted Height by +1.3 metres


Maximum Permitted Height, from Grade to Roof Ridge = 5.8 metres

Proposed Height, from Grade to Roof Ridge = 6.6 metres

Exceeds maximum permitted Height by +0.8 metres

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. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

	Project Number: 254175082-001 Application Date: JUN 12, 2017 Printed: August 14, 2017 at 9:32 AM Page: 1 of 2										
<h2 style="margin: 0;">Application for</h2> <h1 style="margin: 0;">Accessory Building Development and Building Permit</h1>											
This document is a record of a Development Permit and/or Building 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, Safety Codes Act RSA 2000, Safety Codes Act Permit Regulation, Alberta Building Code 2006 and City of Edmonton Bylaw 15894 Safety Codes Permit											
Applicant <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	Property Address(es) and Legal Description(s) 6727 - 94 AVENUE NW Plan 6450KS Blk 36 Lot 19										
Scope of Application To construct an Accessory building (detached Garage, 8.53m x 9.75m) and to demolish existing Garage											
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Building Area (sq. ft.): 896 Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> <td style="width: 50%; border: none;"> Class of Permit: Class A Type of Accessory Building: Detached Garage (010) </td> </tr> </table>		Building Area (sq. ft.): 896 Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Class of Permit: Class A Type of Accessory Building: Detached Garage (010)								
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I/We certify that the above noted details are correct. Applicant signature: _____											
Development Application Decision Refused Reasons for Refusal 1. In a Residential Zone, an Accessory building or structure shall not exceed 4.3 m in Height. For gable roofs, Height shall be determined by measuring from the horizontal plane through Grade to the midpoint of the highest roof. The ridge line of the roof shall not extend more than 1.5 m above the maximum permitted building Height (Reference Section 50.3.2, 52.1.a, 52.2.c). Proposed Height, from Grade to Roof Midpoint = 5.6 m Exceeds maximum permitted Height by +1.3 m. Maximum Permitted Height, from Grade to Roof Ridge = 5.8 m Proposed Height, from Grade to Roof Ridge = 6.6 m Exceeds maximum permitted Height by +0.8 m. Variances Rights of Appeal The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.											
Issue Date: Jul 28, 2017 Development Authority: LIANG, BENNY Signature: _____											
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 15%;">Fee Amount</th> <th style="width: 15%;">Amount Paid</th> <th style="width: 15%;">Receipt #</th> <th style="width: 25%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Safety Codes Fee</td> <td style="text-align: center;">\$4.50</td> <td style="text-align: center;">\$4.50</td> <td style="text-align: center;">04201486</td> <td style="text-align: center;">Jun 12, 2017</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Safety Codes Fee	\$4.50	\$4.50	04201486	Jun 12, 2017
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Safety Codes Fee	\$4.50	\$4.50	04201486	Jun 12, 2017							
THIS IS NOT A PERMIT											



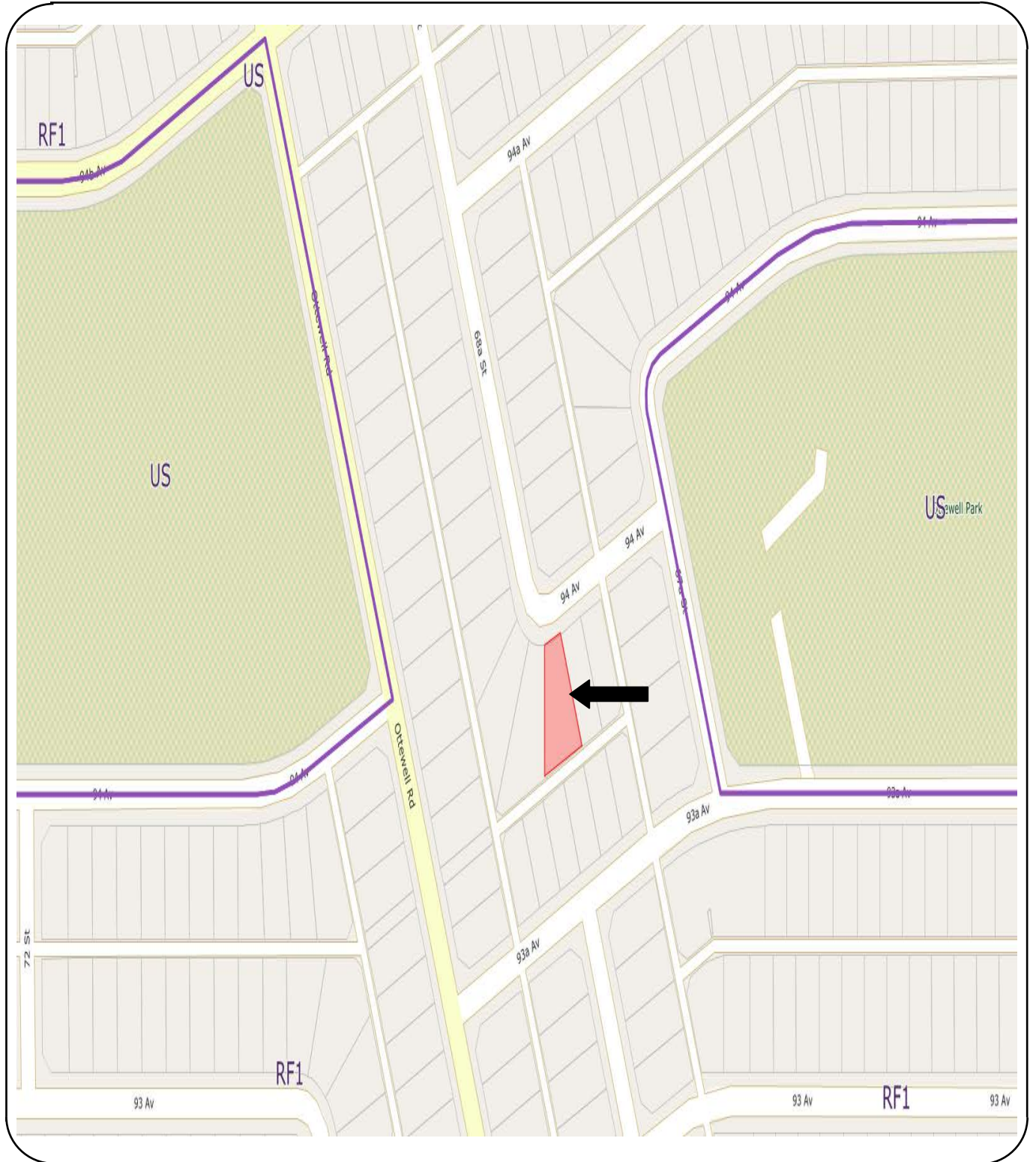
Project Number: **254175082-001**
Application Date: JUN 12, 2017
Printed: August 14, 2017 at 9:32 AM
Page: 2 of 2

**Application for
Accessory Building Development and Building Permit**

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$113.00	\$113.00	04201486	Jun 12, 2017
Building Permit Fee	\$105.00	\$105.00	04201486	Jun 12, 2017
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	\$222.50	<u>\$222.50</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-148



ITEM III: 10:30 A.M.

FILE: SDAB-D-17-149

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 245380263-001

APPLICATION TO: Change the Use from a Restaurant to a Bar and Neighbourhood Pub. (NYALA LOUNGE)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 21, 2017

DATE OF APPEAL: July 26, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10875 - 98 Street NW

LEGAL DESCRIPTION: Plan NA Blk 17 Lots 23-24

ZONE: DC1-Direct Development Control Provision (Area 5)

OVERLAY: N/A

STATUTORY PLAN: Boyle Street / McCauley Area Redevelopment Plan

Grounds for Appeal

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

I have been using bar and lounge for 4 years with the proper City licencing.

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 within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

Designation of direct control districts

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

- 2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be

evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning 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 and statutory plans and, subject to clause (d), the 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.

<i>Rationale</i>

DC1 (Area 5), Section 2 (Section 8.4.16.2) of the Boyle Street McCauley Area Redevelopment Plan states the **Rationale** is to provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan.

Section 7.2.3, Objective 4, states:

To protect residential areas from conflicts with commercial uses.

Development Officer's Determination:

The proposed development is located within the Boyle Street McCauley Area Redevelopment Plan (Area 5). The General Purpose is, "to provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan." (Reference Section DC1(Area 5)(2))

One of the objectives of Section 7.2.3 is to protect residential areas from conflicts with commercial uses. It is the opinion of the Development Officer that the proposed development, a Major Eating and Drinking Establishment (Nightclub), would not achieve this policy objective, as the adjacent and surrounding development is predominately single detached and duplex housing.

...

NOTES:

It is the opinion of the Development Officer that the proposed development would not be in keeping with the general purpose of the Direct Control Zone, which is to provide for low intensity business in order to achieve the policies of Section 7.2.3 of the Boyle Street/McCauley ARP.

<i>Listed Use</i>

Under DC1 (Area 5), Section 3(5) (Section 8.4.16.3.5), a **Minor Eating and Drinking Establishment**, is a Listed Use.

Under Section 10.3(18) of the *Land Use Bylaw*, **Eating and Drinking Establishment, Minor** means development where prepared foods and beverages are offered for sale to the public, for consumption within the premises or off the site. This Use Class includes neighbourhood pubs, licensed restaurants, cafes, delicatessens, tea rooms, lunch rooms, refreshment stands and takeout restaurants. This Use Class does not include Drive-in Food Services, Mobile Catering Food Services, or Major Eating and Drinking Establishments.

Under Section 10.3(17) of the *Land Use Bylaw*, **Eating and Drinking Establishments, Major** means development where prepared food and beverages are offered for sale to the public from establishments which are characterized by one or more of the following features: the provision of theatre, dancing or cabaret entertainment; facilities primarily intended for the on-premise catering of food to large groups; and facilities primarily intended for the provision and consumption of alcoholic beverages which have a seating capacity for 100 or more persons. Typical uses include beverage rooms, cocktail lounge, cabarets, nightclubs, theatre restaurants and banquet facilities.

Section 3.2(1) of the *Edmonton Zoning Bylaw*, states the following:

For the purpose of any Development Permit or Direct Control Provision:

e. Major Eating and Drinking Establishments is deemed to be Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs and Nightclubs;

f. Minor Eating and Drinking Establishments is deemed to be:

- i. Specialty Food Services;
- ii. Restaurants; and
- iii. Bars and Neighbourhood Pubs for less than 100 Occupants.

Under Section 7.4(6) of the *Edmonton Zoning Bylaw*, **Bars and Neighbourhood Pubs** means development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site. This Use typically has a limited menu and minors are prohibited from patronizing the establishment during at least some portion of the hours of operation. Typical Uses include neighbourhood pubs, bars, beverage rooms, and cocktail lounges. This Use does not include Cannabis Lounges.

Under Section 7.4(39) of the *Edmonton Zoning Bylaw*, **Nightclubs** means development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site, in a facility where entertainment facilities take up more than 10% of the Floor Area. This Use typically has a limited menu from a partially equipped kitchen/preparation area and prohibits minors from lawfully utilizing the facility. Typical Uses include dance clubs, cabarets, nightclubs, lounges,

neighbourhood pubs and bars, beverage rooms, and cocktail lounges. This Use does not include Cannabis Lounges.

Under Section 7.4(47) of the *Edmonton Zoning Bylaw*, **Restaurants** mean 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) of the *Edmonton Zoning Bylaw*, **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.

Development Officer’s Determination:

The Development Officer has determined that the proposed development is a Major Eating and Drinking Establishment (Nightclub). The proposed use is neither listed as a Permitted or Discretionary use under the Boyle Street McCauley Area Redevelopment Plan (Reference Section DC1 (Area 5)(3)

NOTES:

...

A site inspection related to a Compliance inquiry shows that the area shown on the floor plan with planters is being used as a dance floor, which is consistent with the definition of a Night Club.

...

It is the opinion of the Development Officer that the late night activities of the proposed Use would adversely affect the amenities, use and enjoyment of neighbouring residential properties. (Reference Section 7.2.3.4 of the Boyle Street McCauley Area Redevelopment Plan).

Parking

DC1 (Area 5), Section 4 (Section 8.4.16.4) of the Boyle Street McCauley Area Redevelopment Plan states the following:

The following criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw.

...

Section 4(4) (Section 8.4.16.4.4) - Parking and loading shall, wherever possible, be located in the rear areas. Required off-street parking shall be in accordance with Section 66 of the *Land Use Bylaw*.

...

Section 4(8) (Section 8.4.16.4.8) - Development in this district shall be evaluated with respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive, of the *Land Use Bylaw*.

Section 4(9) (Section 8.4.16.4.9) - The Development Officer may grant relaxations to the regulations contained in Sections 50 through 79 of the *Land Use Bylaw* and the provisions of this District, if, in his opinion, such a variance would be in keeping with the general purpose of this District and would not adversely affect the amenities, use and enjoyment of neighbouring properties.

Section 66.2, Schedule 66A(10), of the *Land Use Bylaw* states Eating and Drinking Establishments requires 1 Parking Space per 4 seats.

Development Officer's Determination:

In any District, when any new development is proposed including a change of use of existing development, or when any existing development is, in the opinion of the development officer, substantially enlarged or increased in capacity, then provision shall be made for off-street vehicular parking spaces in accordance with the requirements and standards contained in this Section 66. (Reference *Land Use Bylaw 5996*, Section 66.1(1))

Off-street parking required for Minor Eating and Drinking Establishment with 25 seats: 7

Off-street parking required for Minor Eating and Drinking Establishment with 44 seats: 11

Parking requirements increase by: 4 spaces

Proposed increase in off-street parking: 0

The total off-street parking spaces required for the Site, including the proposed increase in seating, shall meet the minimum number of off-street parking spaces per Use as Specified in Section 66.2(1) - Schedule 66A.

Required off-street parking for the Site including the proposed increase in seating: 25 spaces

Proposed off-street parking on Site: 0 spaces*

Deficient by: 25 spaces

NOTES:

Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

<i>Previous Subdivision and Development Appeal Board Decisions</i>
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SDAB Number	Application	DECISION
SDAB-D-12-137	To increase the existing 12 seat capacity and Public Space of an existing Restaurant on the main floor and into the basement, and construct interior and exterior alterations to a Restaurant, Personal Service Shop, and Apartment House building (Nyala Ethiopian Restaurant)	July 6, 2012; that the appeal be ALLOWED and the DEVELOPMENT GRANTED and the deficiency of 17 on-site parking spaces be permitted, subject to the following condition: 1. The basement level of the Restaurant operation is restricted to a 5 p.m. opening on any given business day.

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. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Project Number: 245380263-001
Application Date: APR 10, 2017
Printed: July 21, 2017 at 2:23 PM
Page: 1 of 3

Application for Major Development Permit

This document is a Development Permit Decision for the development application described below.

Applicant



Property Address(es) and Legal Description(s)

10875 - 98 STREET NW
Plan NA Blk 17 Lots 23-24

Specific Address(es)

Entryway: 10875 - 98 STREET NW
Building: 10875 - 98 STREET NW

Scope of Application

To change the Use from a Restaurant to a Bar and Neighbourhood Pub. (NYALA LOUNGE)

Permit Details

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: 0
Stat. Plan Overlay/Annex Area: Boyle Street/McCauley

I/We certify that the above noted details are correct.

Applicant signature: _____

Development Application Decision Refused

THIS IS NOT A PERMIT



Project Number: 245380263-001
Application Date: APR 10, 2017
Printed: July 21, 2017 at 2:23 PM
Page: 2 of 3

Application for Major Development Permit

Reason for Refusal

1) The proposed development is located within the Boyls Street McCauley Area Redevelopment Plan (Area 5). The General Purpose is, "to provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan." (Reference Section DC1(Area 5)(2))

One of the objectives of Section 7.2.3 is to protect residential areas from conflicts with commercial uses. It is the opinion of the Development officer that the proposed development, a Major Eating and Drinking Establishment (Nightclub), would not achieve this policy objective, as the adjacent and surrounding development is predominately single detached and duplex housing.

2) The Development Officer has determined that the proposed development is a Major Eating and Drinking Establishment (Nightclub). The proposed use is neither listed as a Permitted or Discretionary use under the Boyle Street McCauley Area Redevelopment Plan (Reference Section DC1 (Area 5)(3)).

Advisements

1) In any District, when any new development is proposed including a change of use of existing development, or when any existing development is, in the opinion of the development officer, substantially enlarged or increased in capacity, then provision shall be made for off-street vehicular parking spaces in accordance with the requirements and standards contained in this Section 66. (Reference Land Use Bylaw 5996, Section 66.1(1))

Off-street parking required for Minor Eating and Drinking Establishment with 25 seats: 7
Off-street parking required for Minor Eating and Drinking Establishment with 44 seats: 11
Parking requirements increase by: 4 spaces
Proposed increase in off-street parking: 0

3) The total off-street parking spaces required for the Site, including the proposed increase in seating, shall meet the minimum number of off-street parking spaces per Use as Specified in Section 66.2(1) - Schedule 66A.

Required off-street parking for the Site including the proposed increase in seating: 25 spaces
Proposed off-street parking on Site: 0 spaces*
Deficient by: 25 spaces

Notes:

Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

A site inspection related to a Compliance inquiry shows that the area shown on the floor plan with planters is being used as a dance floor, which is consistent with the definition of a Night Club.

It is the opinion of the Development Officer that the proposed development would not be in keeping with the general purpose of the Direct Control Zone, which is to provide for low intensity business in order to achieve the policies of Section 7.2.3 of the Boyle Street/McCauley ARP.

It is the opinion of the Development Officer that the late night activities of the proposed Use would adversely affect the amenities, use and enjoyment of neighbouring residential properties. (Reference Section 7.2.3.4 of the Boyle Street McCauley Area Redevelopment Plan).

Rights of Appeal

The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

THIS IS NOT A PERMIT



Project Number: 245380263-001
Application Date: APR 10, 2017
Printed: July 21, 2017 at 2:23 PM
Page: 3 of 3

Application for Major Development Permit

Issue Date: Jul 21, 2017 Development Authority: BELZILE, PAUL Signature: _____

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$500.00	\$500.00	04044068	Apr 10, 2017
Total GST Amount:	<u>\$0.00</u>	<u> </u>		
Totals for Permit:	\$500.00	\$500.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-149



ITEM II: 10:30 A.M.

FILE: SDAB-D-17-150

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 245489756-001

APPLICATION TO: Develop an Outdoor Patio to an existing Restaurant. (Nyala Ethiopian Restaurant)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 25, 2017

DATE OF APPEAL: July 26, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10875 - 98 Street NW

LEGAL DESCRIPTION: Plan NA Blk 17 Lots 23-24

ZONE: DC1-Direct Development Control Provision (Area 5)

OVERLAY: N/A

STATUTORY PLAN: Boyle Street / McCauley Area Redevelopment Plan

Grounds for Appeal

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

I don't think the parking is an issue. There is enough parking at the restaurant.

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 within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

Designation of direct control districts

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In

particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning 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 and statutory plans and, subject to clause (d), the 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*:

DC1 (Area 5), Section 4 (Section 8.4.16.4) of the Boyle Street McCauley Area Redevelopment Plan states the following:

The following criteria shall apply to the prescribed uses pursuant to Section 710.4 of the *Land Use Bylaw*.

...

8.4.16.4.4 Parking and loading shall, wherever possible, be located in the rear areas. Required off-street parking shall be in accordance with Section 66 of the *Land Use Bylaw*.

...

8.4.16.4.8 Development in this district shall be evaluated with respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive, of the *Land Use Bylaw*.

8.4.16.4.9 The Development Officer may grant relaxations to the regulations contained in Sections 50 through 79 of the *Land Use Bylaw* and the provisions of this District, if, in his opinion, such a variance would be in keeping with the general purpose of this District and would not adversely affect the amenities, use and enjoyment of neighbouring properties.

<i>Parking</i>

Section 66.2, Schedule 66A(10), of the *Land Use Bylaw* states Eating and Drinking Establishments requires 1 Parking Space per 4 seats.

Section 54.2, Schedule 1(A)(24), of the *Edmonton Zoning Bylaw* states a Restaurant requires 1 parking space per 3.6 square metres of Public Space except where the proposed development is on a Lot within the boundaries described in Section 54.2 Appendix II - Boundaries for Reduced Parking Requirement:

Development Officer's Determination:

Required off-street parking shall be in accordance with Section 66 of the *Land Use Bylaw* (Reference Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan).

Required Parking Spaces: 22
Proposed Parking Spaces: 0
Deficiency: 22 Parking Spaces.

Note:

Notwithstanding that the applicant has submitted a proposal for 4 seats within the outdoor patio, the public space area of 61 square metres proposed, would require 17 parking spaces in accordance to the current Zoning Bylaw. This would increase the parking requirement by 16 parking spaces. The area of the proposed outdoor patio would accommodate significantly more than 4 seats, as proposed.

ADVISEMENTS:

1. Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

<i>Parking</i>

Section 90 states the following:

Outdoor Seating Associated With Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs, and Nightclubs

1. If any Specialty Food Service, Restaurant, Bar and Neighbourhood Pub or Nightclub abuts or is across a Lane from a Site zoned residential or a Site with a residential development, the Development Officer shall draw a line parallel to the boundary or Lane separating each such residential development or Zone and bisecting the Site containing the Specialty Food Service, Restaurant, Bar and Neighbourhood Pub or Nightclub Uses and shall not allow any outdoor seating on the side of any such line that is closest to the Residential Zone or development.
2. Outdoor speakers or amplification systems shall not be allowed on a Site that abuts or is across the Lane from a Site zoned residential.

Development Officer’s Determination:


Proposed: The proposed outdoor seating is next to a residential development, abutting a Single Detached House to the North (10879 98 Street), contrary to Section 90.1 of the *Edmonton Zoning Bylaw*.

Previous Subdivision and Development Appeal Board Decisions

SDAB Number	Application	DECISION
SDAB-D-12-137	To increase the existing 12 seat capacity and Public Space of an existing Restaurant on the main floor and into the basement, and construct interior and exterior alterations to a Restaurant, Personal Service Shop, and Apartment House building (Nyala Ethiopian Restaurant)	July 6, 2012; that the appeal be ALLOWED and the DEVELOPMENT GRANTED and the deficiency of 17 on-site parking spaces be permitted, subject to the following condition: 1. The basement level of the Restaurant operation is restricted to a 5 p.m. opening on any given business day.

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. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

	Project Number: 245489756-001 Application Date: APR 11, 2017 Printed: August 15, 2017 at 10:38 AM Page: 1 of 2		
<h2 style="margin: 0;">Application for Major Development Permit</h2>			
<p>This document is a Development Permit Decision for the development application described below.</p>			
Applicant <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	Property Address(es) and Legal Description(s) 10875 - 98 STREET NW Plan NA Blk 17 Lots 23-24 Specific Address(es) Suite: 10875 - 98 STREET NW Entryway: 10875 - 98 STREET NW Building: 10875 - 98 STREET NW		
Scope of Application To develop an Outdoor Patio to an existing Restaurant. (Nyala Ethiopian Restaurant).			
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): </td> <td style="width: 50%; border: none; vertical-align: top;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Boyle Street/McCauley </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Boyle Street/McCauley
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Boyle Street/McCauley		
<p>I/We certify that the above noted details are correct.</p> <p>Applicant signature: _____</p>			
Development Application Decision Refused			
THIS IS NOT A PERMIT			



Project Number: **245489756-001**
 Application Date: APR 11, 2017
 Printed: August 15, 2017 at 10:38 AM
 Page: 2 of 2

Application for Major Development Permit

Reason for Refusal

1. Required off-street parking shall be in accordance with Section 66 of the Land Use Bylaw (Reference Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan).

Required Parking Spaces: 22
 Proposed Parking Spaces: 0
 Deficiency: 22 Parking Spaces.

Note:

Notwithstanding that the applicant has submitted a proposal for 4 seats within the outdoor patio, the public space area of 61 sq.m. proposed, would require 17 parking spaces in accordance to the current Zoning Bylaw. This would increase the parking requirement by 16 parking spaces. The area of the proposed outdoor patio would accommodate significantly more than 4 seats, as proposed.

2. If any Restaurant abuts or is across a Lane from a Site zoned residential or a Site with a residential development, the Restaurant shall not allow any outdoor seating on the side of the Residential Zone or development (Reference Section 90.1).

Proposed: The proposed outdoor seating is next to a residential development, abutting a Single Detached House to the North (10879 98 Street), contrary to Section 90.1 of the Edmonton Zoning Bylaw.

ADVISEMENTS:

1. Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

Rights of Appeal

The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: Jul 25, 2017

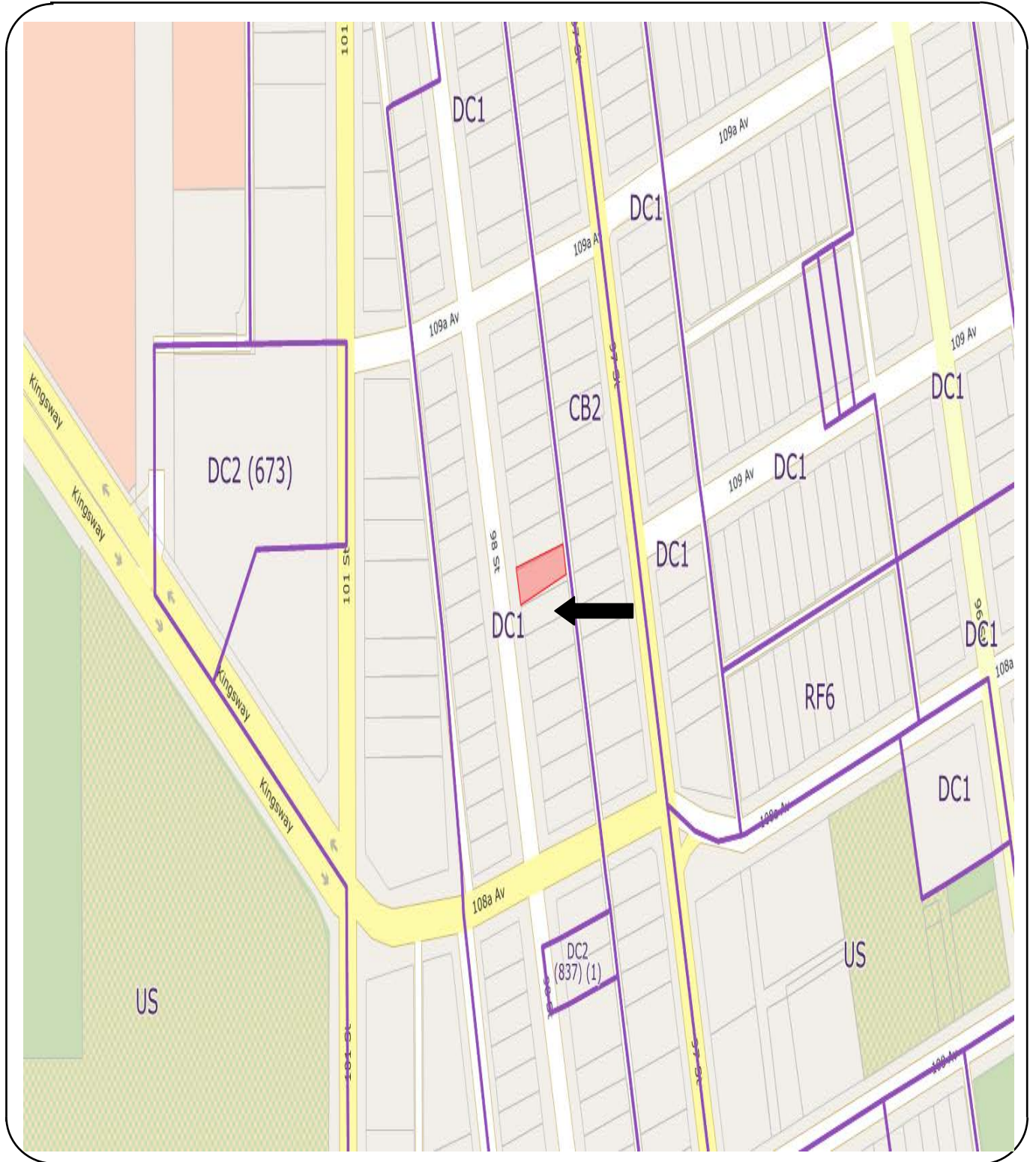
Development Authority: ADAMS, PAUL

Signature: _____

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$354.00	\$354.00	04315443	Jul 24, 2017
Total GST Amount:	\$0.00			
Totals for Permit:	\$354.00	\$354.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-150

