

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
August 30, 2018**

**River Valley Room
City Hall, 1 Sir Winston
Churchill Square NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
RIVER VALLEY ROOM**

I 9:00 A.M. SDAB-D-18-133

To change the Use from Warehouse Sales to a
Cannabis Retail Sales

11610 - 119 Street NW
Project No.: 285822622-001

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-18-133

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.:	285822622-001
APPLICATION TO:	Change the Use from Warehouse Sales to a Cannabis Retail Sales
DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
DECISION DATE:	July 27, 2018
DATE OF APPEAL:	August 7, 2018
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	11610 - 119 Street NW
LEGAL DESCRIPTION:	Condo Common Area (Plan 0825767)
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:

We are solicitors for Nicholas Booth, principal of the Applicant in the above noted matter. Our clients' Development Permit Application has been refused. On behalf of our clients, we hereby appeal the refusal on the following grounds:

1. The proposed development, Cannabis Retail Sales, is a Permitted Use in the CB2 General Business Zone and requires a variance with respect to the "title to title" separation requirements of section 85.6 of the Edmonton Zoning Bylaw.
2. The site across Kingsway Avenue and lying to the northeast of the subject lands (Lot 2, Block 6A, Plan 9220135) comprises an area of 535 acres /

2,164,507 square metres and represents the vast bulk of the City-owned Blatchford area redevelopment. That titled area has not yet been re-subdivided into separate lots for the various users and it continues to bear the Airport Industrial Zonings from the past. The Amiskwaciy Academy is located within that titled area, but, at its nearest point, is 394 metres distant from the site boundary of our clients' proposed business location.

3. Moreover, the proposed development is separated from the Amiskwaciy Academy by:

- an intervening, Medium Industrial zoned lot;
- two hotels;
- a parkade facility; and
- several lanes of Kingsway Avenue.

4. The parking requirements for the subject site are skewed by the location there of an Indoor Participant Recreation Services use (the "Axe Hole"). On the issuance of the Development Permit for that facility, a significant parking variance was justified and granted, and it is that variance that is reflected in the current refusal.

5. The current development proposes to replace 106.7 m² of Warehouse Sales usage with Cannabis Retail usage. Per Schedule 1(A) of section 54.2 of the Zoning Bylaw:

- The former use requires 1 parking space per 100.0 m² of Floor Area or 2 parking stalls.¹
- The proposed use requires 1 parking space per 40.0 m² of Floor Area or 3 parking stalls.

The difference in parking stalls required on the change of use is only 1 stall.

6. The Landlord of the subject site has leased the vacant property to the northeast in case additional parking is ever required. At the present, though, that requirement is unlikely to arise as the lease for the "Axe Hole" has expired and will not be renewed.

7. Such further and other reasons as may be presented at the hearing of this appeal.

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or

(c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, [...]

Hearing and Decision

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

...

(a.1) must comply with the land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to 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 340.2(6), **Cannabis Retail Stores** is a **Permitted Use** in the **(CB2) General Business Zone**.

Under section 7.4(9), **Cannabis Retail Stores** means:

development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use may include retail sales of Cannabis accessories. This Use does not include Cannabis Production and Distribution.

Under section 6.1, **Cannabis** means:

a cannabis plant and anything referred to in subsection (a) of this definition but does not include anything referred to in subsection (b) of this definition:

- a. Cannabis includes:
 - i. any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in subsection (b) of this definition.
 - ii. any substance or mixture of substances that contains or has on it any part of such a plant;
 - iii. any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.
- b. Notwithstanding subsection (a) of this definition, Cannabis does not include:
 - i. a non-viable seed of a cannabis plant;

- ii. a mature stalk, without any leaf, flower, seed or branch, of such plant;
- iii. fibre derived from a stalk referred in subsection (b)(ii) of this definition; and
- iv. the root or any part of the root of such a plant.

Under section 6.1, **Setback** means “the distance that a development or a specified portion of it, must be set back from a property line. A Setback is not a Yard, Amenity Space, or Separation Space.”

Under section 6.1, **Site** means “an area of land consisting of one or more abutting Lots.”

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.

<p><i>Section 70 - Cannabis Retail Sales regulations</i></p>

1. Any Cannabis Retail Sales shall not be located less than 200 metres from any other Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 200 metres separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
 - b. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 metres in compliance with Section 11; and
 - c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)b shall be issued as a Class B Discretionary Development.
2. Any Site containing a Cannabis Retail Sales shall not be located less than 200 metres from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 200 metres 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 “public library” is limited to the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries; and
 - c. the term "public or private education" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools.
3. Any Site containing a Cannabis Retail Sales shall not be located less than 100 metres from any Site being used for Community Recreation Services Use, a community recreation facility, a provincial health care facility, as public lands, or any Site that is designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 100 metres 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 recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and
 - c. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.
4. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2) or 70(3).
5. Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the development officer, including the following requirements:
 - a. customer access to the store is limited to a store front that is visible from the street other than a Lane, or a shopping centre parking lot, or a mall access that allows visibility from the interior of the mall into the store;

- b. the exterior of all stores shall have ample transparency from the street;
 - c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
 - d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.
6. The Development Officer shall impose a condition on any Development Permit issued for Cannabis Retail Sales requiring that the development:
- a. shall not commence until authorized by and compliant with superior legislation; and
 - b. must commence within nine (9) months of the date of approval of the Development Permit.
7. For the purposes of Section 70(6), development commences when the Cannabis Retail Sales Use is established or begins operation.

Development Officer's Determination

1) The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a school (Amiskwaciy Academy) (Section 70.2):

Required Setback: 100 m

Proposed Setback: 73 m

Deficient by 27 m

Under Section 70.4 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store.

Parking

Section 54.2, Schedule 1(A)(12) states Any development within a Commercial Use not listed separately in this table, with a Floor Area of:

Use of Building or Site	Minimum Number of Parking Spaces Required
a. less than 4 500 m ²	1 parking space per 40.0 m ² of Floor Area
b. 4 500m ² - 9 000m ²	1 parking space per 33.3 m ² of Floor Area
c. 9 000 m ² 28 000 m ²	1 parking space per 28.5 m ² of Floor Area
d. greater than 28 000 m ²	1 parking space per 25.0 m ² of Floor Area

Development Officer’s Determination

2) Vehicular parking shall be provided in accordance with Section 54.2 Schedule 1(A) of the Zoning Bylaw:


Required parking: 120 spaces

Proposed parking: 57 spaces

Deficient: 63 spaces

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	Project Number: 285822622-001 Application Date: JUN 25, 2018 Printed: August 8, 2018 at 9:56 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 <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	Property Address(es) and Legal Description(s) 11610 - 119 STREET NW Condo Common Area (Plan 0825767)										
	Specific Address(es) Suite: 11610 - 119 STREET NW Entryway: 11610 - 119 STREET NW Building: 11614 - 119 STREET NW										
Scope of Application To change the use from Warehouse Sales to a Cannabis Retail Sales.											
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.): 10 New Sewer Service Required: N Site Area (sq. m.): 4593 </td> <td style="width: 50%; border: none; vertical-align: top;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): 10 New Sewer Service Required: N Site Area (sq. m.): 4593	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)								
Class of Permit: Gross Floor Area (sq.m.): 10 New Sewer Service Required: N Site Area (sq. m.): 4593	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)										
I/We certify that the above noted details are correct. Applicant signature: _____											
Development Application Decision Refused Issue Date: Jul 27, 2018 Development Authority: WELCH, IMAI Reason for Refusal 1) The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a school (Amiskwaciy Academy) (Section 70.2): Required Setback: 100 m Proposed Setback: 73 m Deficient by 27 m Under Section 70.4 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store. 2) Vehicular parking shall be provided in accordance with Section 54.2 Schedule 1(A) of the Zoning Bylaw: Required parking: 120 spaces Proposed parking: 57 spaces Deficient: 63 spaces Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.											
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 10%;">Fee Amount</th> <th style="width: 10%;">Amount Paid</th> <th style="width: 10%;">Receipt #</th> <th style="width: 10%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td>\$5,600.00</td> <td>\$5,600.00</td> <td>05127359</td> <td>Jun 25, 2018</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$5,600.00	\$5,600.00	05127359	Jun 25, 2018
	Fee Amount	Amount Paid	Receipt #	Date Paid							
Major Dev. Application Fee	\$5,600.00	\$5,600.00	05127359	Jun 25, 2018							
THIS IS NOT A PERMIT											



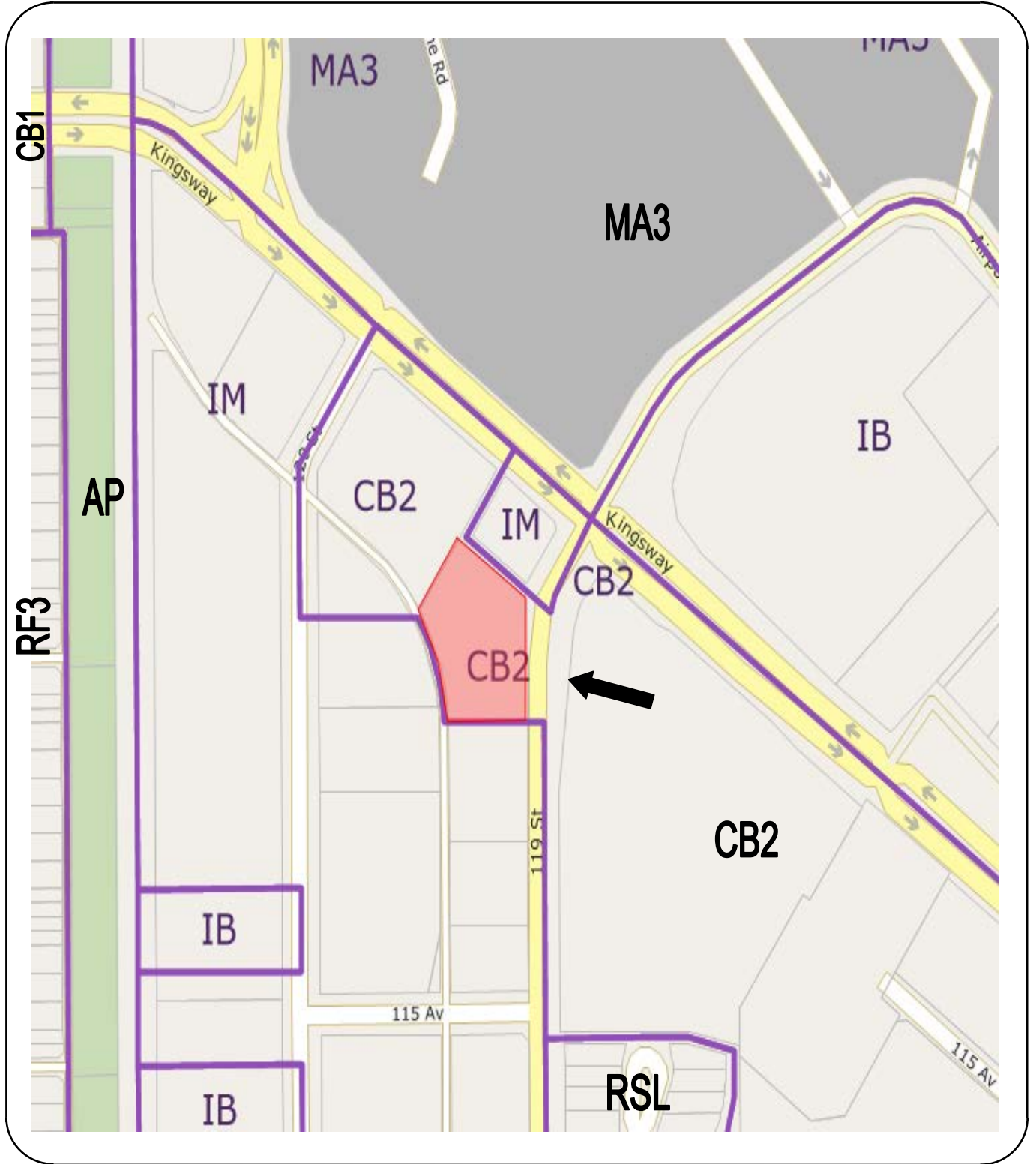
Project Number: **285822622-001**
Application Date: JUN 25, 2018
Printed: August 8, 2018 at 9:56 AM
Page: 2 of 2

Application for Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Cannabis Retail	\$0.00			
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$5,600.00</u>	<u>\$5,600.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-133

