

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Thursday, 9:00 A.M.  
December 13, 2018**

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

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

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**TO BE RAISED**

I 9:00 A.M. SDAB-D-18-201 To change the use from General Retail Stores to Cannabis Retail Sales

4303 - 167 AVENUE NW  
Project No.: 287222895-001

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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.*

**TO BE RAISED**

ITEM I: 9:00 A.M.

FILE: SDAB-D-18-201

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 287222895-001

APPLICATION TO: Change the use from General Retail Stores to Cannabis Retail Sales

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 26, 2018

DATE OF APPEAL: November 15, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 4303 - 167 AVENUE NW

LEGAL DESCRIPTION: Plan 1421576 Blk 25 Lot 4

ZONE: CB2-General Business Zone

OVERLAY: N/A

STATUTORY PLAN: Brintnell Neighbourhood Structure Plan  
Pilot Sound Area Structure Plan

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*Grounds for Appeal*

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

The proposed development will not unduly interfere with the amenities of the neighborhood.

The proposed development will not materially interfere with or affect the use, enjoyment or value of neighboring parcels of land.

The proposed development conforms with the use prescribed for the subject land or building in the zoning bylaw. The subject site is zoned CB2 and within that zoning the proposed development is a permitted use.

The proposed development complies with Section 105 (3) of the Gaming, Liquor and Cannabis Regulation.

The Court of Appeal has determined the board has the power to vary a general regulation

*General Matters*

**The Subdivision and Development Appeal Board (the “Board”) made and passed the following motion on December 5, 2018:**

**“That SDAB-D-18-201 is TABLED to December 13, 2018, at 9:00 a.m.”**

**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;
- (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***

Section 340.2(6) states **Cannabis Retail Sales** is a **Permitted Use** in the **(CB2) General Business Zone**.

Under Section 7.4(9), **Cannabis Retail Sales** 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 7.8(12), **Public Libraries and Cultural Exhibits** means:

means development for the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public Use; or a development for the collection, preservation and public exhibition of works or objects of historical, scientific or artistic value. Typical Uses include libraries, museums and public, not-for-profit art galleries.

Section 340.1 states that the **General Purpose** of **(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.

***Section 70 – Cannabis Retail Sales Regulations***

- 1. Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:
  - a. The 200 m 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 m 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 m 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 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 “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 m 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 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 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**

The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a site containing a public library (Section 70.2):

Required Setback: 200 m

Proposed Setback: 0 m

Deficient by 200 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 [**unedited**]

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***Previous Subdivision and Development Appeal Board Decision***

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<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
SDAB-D-15-218	To construct a Restaurant (376 square metres of Public Space; including outdoor patio)	October 15, 2015; The appeal is <b>ALLOWED</b> and the decision of the Development Authority is Revoked. The development is <b>GRANTED</b> as applied for to the Development Authority.


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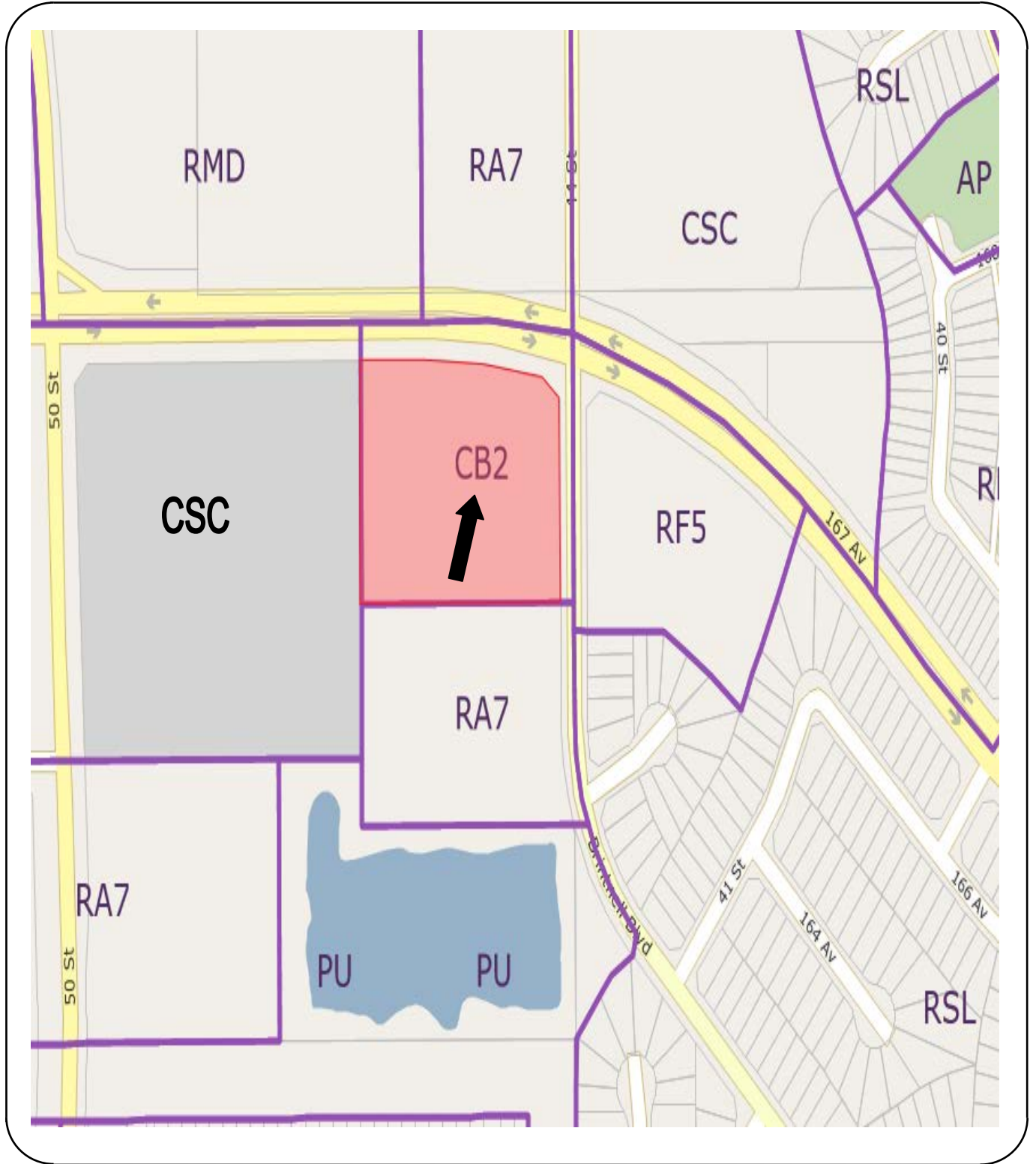
Notice to Applicant/Appellant

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>287222895-001</b> Application Date: JUL 11, 2018 Printed: November 15, 2018 at 3:04 PM Page: 1 of 1			
<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> 4303 - 167 AVENUE NW Plan 1421576 Blk 25 Lot 4			
<b>Scope of Application</b> To change the use from General Retail Stores to Cannabis Retail Sales.				
<b>Permit Details</b>				
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: (none)			
I/We certify that the above noted details are correct.  Applicant signature: _____				
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Oct 26, 2018 <b>Development Authority:</b> WELCH, IMAI  <b>Reason for Refusal</b> The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a site containing a public library (Section 70.2):  Required Setback: 200 m Proposed Setback: 0 m Deficient by 200 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.  <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.				
<b>Fees</b>				
	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
Major Dev. Application Fee	\$5,600.00	\$5,600.00	05175711	Jul 11, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$5,600.00	\$5,600.00		
<b>THIS IS NOT A PERMIT</b>				



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-201



